4592.

SUPREME COURT OF THE UNITED STATES.

No. 155.

JOSEPH FOWLER, JR., APPELLANT,

vs.

NATHAN HART.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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United States circuit court, fifth circuit, and eastern district of Louisiana.

JOSEPH FOWLER, jr., vs. NATHAN HART. } No. 1620.

Pleas and proceedings before the hon. the circuit court of the United States, for the fifth circuit, and eastern district of Louisiana, being the December term of said court, held at the city of New Orleans aforesaid, on the fifteenth day of April, A. D. 1850.

Be it remembered, that heretofore, to wit, on the eighteenth day of June, A. D. 1847, came Joseph Fowler, jun'r, by his solicitor, W. C. Micou, esquire, and filed in the clerk's office of said court a transcript of record and proceedings certified from the third district court of New Orleans, which is in words and figures following, to wit:

United States circuit court, 5th circuit, and eastern district of Louisiana.

Transcript of record and proceedings in the suit of

JOSEPH FOWLER, jun'r, vs. NATHAN HART. } No. 1620

[Transferred to this court from the third district court of New Orleans.]

Transcript from third district court of New Orleans, filed June 18th, 1847, and submitted by consent the 16th day of May, anno domini 1849.

State of Louisiana, third district court of New Orleans. No. 426.
Petition filed March 15th, 1847.

JOSEPH FOWLER, junr., vs. NATHAN HART.

To the honorable the third district court of New Orleans.

The petition of Joseph Fowler, junr., of said city, respectfully shews, therefore, to wit: On or about the 16th December, 1839, petitioner recovered a judgment in the commercial court of New Orleans against Daniel T. Walden and William Christy, in solido, for the sum of three thousand five hundred and thirty $\frac{44}{100}$ dollars, besides interest at 10 per cent. per ann. from the 13th December, 1838, until paid, and costs; all of which will more fully appear by the record of said suit in said court.

Petitioner further shews, that afterwards, to wit, on or about the 29th December, 1839, petitioner caused the said judgment to be duly inscribed in the offices of the recorder of mortgages for the parish of Orleans, by which the same became a judicial mortgage upon all the real estate of said Walden and Christy in said parish; that said Walden afterwards became bankrupt, and said Christy was appointed his assignee under the act of Congress; and the said Christy, therefore, attempted to erase and cancel the said mortgage from said records, and procured an entry of cancellation to be made by the recorder; but your petitioner charges that said pretended erasure was wholly without his consent or knowledge, and unauthorized and illegal; that said cancellation was null, and the said inscription still remains in full force and vigor, and bears upon all property possessed by said D. T. Walden.

Petitioner further shews, that at the date of said inscription, and up to the time of the bankruptcy of said D. T. Walden, the said Walden was owner, and in possession of, a certain lot of ground, and buildings thereon, in the city of New Orleans, to wit, in the second municipality, in the square bounded by New Levee, St. Joseph, Commerce, and Julia streets, measuring 23 ft. 5 inches front on New Levee street, by about 125 feet 6 in. in depth on the side nearest St. Joseph street; 124 feet 7 inches in depth on the side nearest Julia street; and about 21 feet 8 inches on the rear line; being the lot of ground designated by the number three, on a certain plan of

which said property was affected, and still remains liable to the said judicial mortgages of petitioner.

Petitioner further shews, that the said Christy was assignee of said Walden; sold the said lot to one Nathan Hart, of New York, who took possession thereof, and has ever since remained in possession as owner. That the said Hart at the time of said purchase well knew that petitioner held the said judicial mortgage, and that said mortgage *have* upon said lot; that he also knew that said William Christy, assignee, had no power or authority to erase or cancel the said mortgage, but nevertheless procured a pretended release thereof from said William Christy as aforesaid, and ever since pretends that said property is free of said mortgage.

Petitioner further shews, that by the proviso of the second section of the Bankrupt act of the United States, he was, as a mortgagee, specially exempted from the jurisdiction of the United States district court, sitting in bankruptcy; that his mortgage was protected thereby, and that the said court has no power or authority to release said mortgage; that petitioner never proved his debt or relinquished his mortgage, nor was he cited in the premises.

Petitioner further shews, that said Walden is bankrupt, his estate utterly insolvent, and that payment of said judgment has been demanded of said Walden, and of his said assignee and reference. Therefore he prays that the said Nathan Hart, Isaac N. Marks, his attorney in

fact, be cited to appear and answer herein; that there be judgment condemning the said lot and premises to be sold by the sheriff, in due form of law, in satisfaction of petitioner's aforesaid judicial mortgage, to wit, $3530 22, with interest at 10 p. c., from 13th December, 1838, and costs; and that said Nathan Hart be further condemned to account to petitioner towards the payment of said judgment for all rents and revenues of said property, and for general relief.

(Signed) WM. C. MICOU,
Of counsel.

Citation.

STATE OF LOUISIANA,
Third district court of New Orleans.

Mr. Nathan Hart, of N. York, by Isaac N. Marks, your attorney in fact, New Orleans.

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the third district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Thos. H. Kennedy, judge of the said court, this 17th day of May, in the year of our Lord 1847.

(Signed) LOUIS R. CORNTEN,
Dep'y clerk.

JOSEPH FOWLER, jun'r,
vs. } No. 426.
NATHAN HART.

Sheriff's return.

Rec'd May 17th, 1847; served, on the 18th of the same month, copy of petition and citation personally on Isaac N. Marks, attorney in fact of defendant. Returned 19th May, 1847.

(Signed) JNO. L. LEWIS, *Sheriff.*

Petition for removal of cause to U. S. court. Filed 26th May, 1847.

To the honorable Thomas H. Kennedy, the judge of the 3d (third) district court of New Orleans.

The petition of Nathan Hart, a citizen of the State of New York, who resides in N. York, respectfully represents, that Joseph Fowler, junior, a citizen of Louisiana, who resides in New Orleans, has filed his petition in this honorable court, being No. 426 of the docket of this court, against this petitioner, praying process on a demand for $3530 22, with interest at 10 p. c., from 13th December, 1838, and costs, and to account towards pay't of said judg't for all rents and revenues of said property, and that said suit is commenced in a State court by a citizen of the State in which the suit is brought against a citizen of the State

of New *New* York; and that said Joseph Fowler, jun'r, is a citizen of Louisiana, and that no special bail has been required in said suit, and that the matter in dispute exceeds the value of $500. Pet'r therefore prays that the annexed affidavit and bond being considered, an order be granted, directing the removal of said suit against your petitioner, to the circuit court of the United States, for the fifth circuit, holding sessions in and for the district of Louisiana, and prays for the removal of the cause for trial into the next circuit court to be held in the district where the suit is pending, and for all other and further general relief.

(Signed) M. M. COHEN,
Of counsel for pet'r.

Affidavit.

J. N. Marks, attorney in fact of Nathan Hart, being duly sworn, deposeth that all the facts, allegations, and statements of the foregoing petition are true.

(Signed,) J. N. MARKS, *Attorney in fact.*

Sworn to and subscribed before me, N. O., May 25th, 1847.
LOUIS R. COURTER, *Deputy clerk.*

Order.

Let the prayer of the within petition be granted, and let this cause be removed to the circuit court of the United States, for the fifth judicial circuit, in and for the district of Louisiana, for trial at the next circuit court to be held, on petitioner giving bond with good and solvent security in the sum of five hundred dollars, according to the act of Congress. New Orleans, 26th May, 1847.

(Signed,) T. H. KENNEDY, *Judge.*

Bond.

Know all men by these presents that we, Nathan Hart, citizen of New York, and Jacob Hart, of New Orleans, and Charles Claiborne, are held and firmly bound unto Joseph Fowler, jun'r, of New Orleans, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Joseph Fowler, jr., his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated the 26th day of May, 1847. Whereas the said Nathan Hart hath this day applied to the honorable the third district court of New Orleans, praying for the removal to the next circuit court of the United States, to be holden in the district of Louisiana, of a suit instituted by said Fowler against said Hart.

Now, the condition of the above obligation is, that if the above bounden Nathan Hart shall enter and file in the said court of the Unit-

ed States on the first day of the session, copies of the process against him, and shall then and there appear in said suit, then this bond shall be void, but otherwise to remain in full force and virtue.

(Signed,) NATHAN HART,
Pro. pro. J. N. MARKS, [L. S.]
(Signed,) JACOB HART, [L. S.]
(Signed,) CHARLES CLAIBORNE.

STATE OF LOUISIANA,
Third district court of New Orleans.

I hereby certify, that the foregoing six pages do contain a true transcript of all the proceedings had in the suit of Joseph Fowler, jun'r versus Nathaniel Hart, No. 426 of the docket of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this seventh day of June, in the year of our Lord one thousand eight hundred and forty-seven, and in the 71st year of the independence of the United States of America.

[SEAL.]

W. P. BEDLOCK, *Clerk*.

Answer filed June 1847.

JOSEPH FOWLER, jun'r,
vs.
NATHAN HART.

In the circuit court of the United States, for the 5th circuit and district of Louisiana.

Into the said court, by his attorney, comes Nathan Hart, cited as defendant in the above entitled cause, removed from the third district court of New Orleans, into this court by the order of the judge of said 3d district court, as will appear by the transcript, duly certified by the clerk of said district [court] on the 7th day of June, 1847, and herewith filed in this court; and respondent, for answer to plaintiff's petition, denies all and singular the allegations thereof, except as herein after admitted; respondent further answering avers, that petitioner has no mortgage on the property now possessed by this respondent, described in plaintiff's petition. That respondent purchased said property according to his title, as will more fully appear by the copy thereof annexed to, and made part of, this answer. By virtue of adjudications made by the marshal of the United States for this district on the 16th day of June, 1845, in pursuance of a decree of the United States district court for this district, of the 23d day of May, 1845, the said court sitting as a court of bankruptcy, in the matter of the bankruptcy of Daniel T. Walden, and confirmed according to law by a sale duly recorded from Wm. Christy, assignee of said bankrupt, by act before H. B. Cenas, notary public, dated the 19th day of June, 1845, and clear of all mortgages, the same having been cancelled by order and judgment of said court,

dated 23d day of May, 1845, on a rule, notice of which rule was duly served personally on petitioner. Defendant avers that petitioner has no right to proceed upon any pretended mortgage against this defendant as third possessor of his purchase as aforesaid, under judgments and decrees of courts erasing all mortgages; that the said orders, judgments and decrees, and sales cannot be considered, and are not in any manner nullities, and defendant pleads the said orders, judgments, decrees, and sales in bar. Defendant avers that he is owner and possessor in good faith; that petitioner was *conisant* of all the said judgments, orders, and decrees, and sales by the marshal and assignee as aforesaid, and that petitioner is barred and bound by said knowledge and notice; and that petitioner's present attempt to injure defendant is in bad faith, and petitioner is liable to pay to the defendant the sum of one thousand dollars damages for said illegal and vexatious proceedings; that even if said assignee had no power or right to cause to be raised and cancelled said mortgage, and if all the mortgages heretofore resting on the property of said Walden were restored and declared valid, still petitioner would have no right or claim in law or equity against this defendant, because even admitting the allegations of petitioner, (which are denied,) he had only a general mortgage from 29th December, 1839; whereas this respondent had a special mortgage on the very property described in plaintiff's petition, from the 22d day of May, 1838, and a judgment confirming said mortgage by the judge of the United States district court for this district, sitting in bankruptcy, from which there is no appeal, and which judgment ordered said property to be sold on the application of this defendant, the first and special mortgage creditor, and the proceeds to be applied to the payment of defendant's special mortgage for $8,655 and interest; which judgment defendant pleads as final and as "res judicata;" that defendant has acted in good faith throughout the whole transaction, and has complied with the terms and conditions of the sale. Wherefore defendant prays to be hence dismissed at petitioner's cost, and for $1,000 damages as aforesaid, and for such other or further relief in the premises as the nature and circumstances of this case may require and to your honors shall [seem] meet. And this respondent, as in duty bound, will ever pray, &c.

M. M. COHEN,
Of counsel for defendant.

Sale of property by assignee of D. T. Walden to Nathan Hart.
Filed June 18, 1847.

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared William Christy, of this city, herein acting in his capacity of assignee of Daniel T. Walden, also of this city, a bankrupt, having

been duly appointed as such by an order of the United States district court, for the eastern district of Louisiana; which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana.

Sitting in bankruptcy, July 18, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Daniel T. Walden, to be declared a bankrupt. No. 274.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Daniel T. Walden be, and he is hereby, declared and decreed a bankrupt, pursuant to the act of Congress, entitled an act to establish a uniform system of bankruptcy throughout the United States, passed August 19, 1841.

It is further ordered that William Christy be, and he is hereby, appointed assignee of the estate of the said bankrupt, and that the said William Christy give a security in a bond to the United States, with two sufficient sureties, to be approved by the court in the sum of twenty-five thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said William Christy.

Clerk's office, *January* 4, 1843.

I, N. R. Jennings, clerk of the United States district court, for the eastern district of Louisiana, do certify, that the above orders and decrees were made by the court on the 18th July, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS,
Clerk of the U. S. dist. court, eastern dist. of La.

To William Christy, *assignee*.

Which said appearer declared that, pursuant to an order of the honorable court aforesaid, dated on the twenty-third day of May last, and after the legal and requisite advertisements had been made, he caused to be exposed for sale, by public auction, on the sixteenth day of June instant, at Banks' Arcade, in this city, by William F. Wagner, United States marshal for the said eastern district of Louisiana, certain immoveable property belonging to the estate of said bankrupt; and that at the said sale or auction the property hereafter described was adjudicated by the said marshal to Edmund J. Hart, for the use and account of Nathan Hart, as the last and highest bidder thereon, for the price and sum of four thousand seven hundred dollars, as will appear by reference to the procès verbal of the said marshal, annexed in the margin hereof for reference.

Now, therefore, in confirmation of the said adjudication, he, the said William Christy, moreover declared that he does, by these presents, in his said capacity of assignee, grant, bargain, sell, transfer, convey, assign, and set over, unto the said Nathan *Nathan* Hart, of the city and State of New York, herein represented by the said Edward J. Hart, of this city, by virtue of a power of attorney passed before William Christy, a notary public of this city, on the second day of June inst.; he, the said Edmund J. Hart, being here present, accepting and purchasing for his said constituent, his heirs and assigns, and acknowledging delivery and due possession thereof of a certain lot of ground, together with the three-story building (number 110, new levee) and other improvements thereon, rights, privileges, customs, ways, servitudes, and appurtenances thereunto belonging, or in anywise appertaining, situate in the municipality No. two, of this city, in the square bounded by the New Levee street, Joseph, Commerce, and Julia streets, and measuring twenty-three feet five inches front on New Levee street by about one hundred and twenty-five feet six inches in depth on the side nearest to St. Joseph street; one hundred and twenty-four feet seven inches in depth on the nearest side to Julia street, and about twenty-one feet eight inches in width on the rear line, American measure; which property was acquired by the said bankrupt jointly with Isaac T. Preston by purchase from the succession of the late Nathaniel Emerson, by an act passed before William Y. Lewis, a notary public in this city, on the twelfth day of May, (1835,) eighteen hundred and thirty-five; and by an act passed before the same notary on the twenty-eighth day of the same month, the said Isaac T. Preston sold and conveyed the said property to the said bankrupt, thereby making the latter sole owner of the premises.

To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their own proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent by virtue of these presents.

This sale is made and accepted for and in consideration of the price and sum of four thousand seven hundred dollars, ($4,700.) And whereas the present purchaser, the said Nathan Hart, is a creditor of the said bankrupt in the sum of eight thousand six hundred and fifty-five dollars, to secure which amount, together with eventual interest thereon, at the rate of ten per centum per annum, the said bankrupt granted a special mortgage in favor of the said Nathan Hart by an act passed before Amedee Ducatel, a notary public in this city, on the twenty-second day of May, eighteen hundred and thirty-eight; upon which mortgage a judgment was rendered by the aforesaid district court in favor of the said mortgage on the fifth day of December last, by which the said assignee was ordered and directed to proceed to advertise and sell the above described property, and apply the proceeds thereof to the payment of the said purchaser's debt. Now, therefore, he, the said Ed-

mund J. Hart, on behalf of his constituent, the said Nathan Hart, doth, by these presents, retain the said price of four thousand seven hundred dollars in part payment and liquidation of the sum of eight thousand six hundred and fifty-five dollars and interest, for which he, the said purchaser, is a creditor as aforesaid; hereby binding and obligating the said purchaser to contribute his proportion of all costs and charges accruing on the liquidation and settlement of the estate of the said bankrupt according to law.

By reference to the annexed certificate of the recorder of mortgages, in and for this city and parish, dated this day, it will appear that the aforesaid property is free from encumbrance, with the exception of—

1st. A special mortgage granted by the said bankrupt, in favor of the said Nathan Hart, hereinbefore mentioned and referred to.

2d. And the general mortgage, in favor of the mayor, aldermen, &c., resulting from a judgment rendered by the parish court, on the 18th day of January, 1841, against the bankrupt and J. Walden, in solido, for the sum of fifteen hundred and twenty-one dollars and twenty-five cents; which general mortgage he, the said assignee, hereby binds himself to cause to be duly raised and cancelled without delay, so far as the same bears upon and affects the above described property.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Auguste Commandeur and Michel Aime, junior; witnesses of lawful age, domiciliated in this city, who hereunto subscribe their names, together with the said parties, and me, notary, this 19th day of June, in the year of our Lord one thousand eight hundred and forty-five.

Original signed, WILLIAM CHRISTY,
Assignee of D. T. Walden.
NATHAN HART,
P. pro. E. J. HART,
A. COMMANDEUR,
ML. AIME,
H. B. CENAS, *Notary Public.*

I certify the foregoing to be a true copy of the original act extant on my current register.

In faith whereof I grant these presents, under my signature and impress of my official seal, at the city of New Orleans, and State [SEAL.] of Louisiana aforesaid, on this twelfth day of July, in the year of our Lord one thousand eight hundred and forty-five.

H. B. CENAS, *Notary Pub.*

I, register of conveyances, certify, that the present act has been this day recorded in my office, in book C, No. 37, p. 453. New Orleans, 18th July, 1845. BERNARD MARIGNY.

And afterwards, to wit, on the 14th January, A. D. 1848, the following order was made and entered of record on the minutes:

[REC. CLV, D. T. 1851.]—2

JOSEPH FOWLER, jr., vs. NATHAN HART. } No. 1620.

The trial of this cause being assigned for this day, the cause was taken up, the respective parties appearing by their counsel; W. C. Micou, esqr., appearing for plaintiff, and Messrs. Grymes & Cohen for defendant; when, it appearing to the court that the matters and things set forth in the pleadings are properly cognizable in equity, it is ordered, that the said cause be transferred to the chancery docket of this court, and that the plaintiff's petition stand as his original bill in chancery, and the answer as the answer of deft. in chancery, with leave to both parties to amend, according to the rules of practice in equity.

And afterwards, to wit, on the 28th January, 1848, Wm. C. Micou, esqr., solicitor for plaintiff, came into court and filed herein the following

Replication.

JOSEPH FOWLER, junior, vs. NATHAN HART. } In chancery.

This cause having been transferred, by order of court, to the chancery docket and rules, with leave to amend:

Now comes the complainant, and waiving the right to amend his said original bill, files this his replication to the answer of said defendant, and says, that the facts and allegations in said original bill contained are true and correct, and that the allegations of said answer, so far as they contradict or differ from the allegations of said original bill, are not true.

WM. C. MICOU.

And afterwards, to wit, on the 27th day of January, A. D. 1849, the following order was entered of record on the minutes:

Order of court.

JOS. FOWLER, junr., vs. NATHAN HART. } No. 1620.

On motion of W. C. Micou, solicitor for complainant, it is ordered by the court that this case be assigned for trial for Tuesday, 13th of February next, and that the defendant be notified of this order.

And afterwards, to wit, on the 4th day of May, A. D. 1849, the following order of continuance was entered on the minutes:

JOS. FOWLER, jr., vs. NATHAN HART. } 1620.

The trial of this case being assigned for this day, by consent of coun-

sel, it is ordered that the same be continued till Wednesday, the 16th instant.

And afterwards, to wit, on the 16th day of May, A. D. 1849, the following entry of the submission of the cause was made of record on the minutes:

FOWLER vs. HART. } 1620.

This cause, having been regularly assigned for this day, was called up for trial, when, by consent of parties, the same was submitted to the court without argument, on briefs to be filed.

And afterwards, to wit, on the 15th February, A. D. 1850, the following order was made and entered of record on the minutes:

JOSEPH FOWLER, jr. vs. NATHAN HART. } 1620.

On motion of W. C. Micou, esq., it is ordered, that this cause be placed on the issue docket.

And afterwards, to wit, on the 15th April, 1850, the following entry was made on the minutes of the submission of the cause:

JOSEPH FOWLER, jr. vs. NATHAN HART. } 1620.

This cause, having been assigned for this day, came on to be heard, and, after argument of counsel, the same was submitted to the court and taken under advisement.

Testimony offered by plaintiff.

Document A.—Copy of record from commercial or 4th district court, filed 28th January, 1848, and offered April 15, 1850.

STATE OF LOUISIANA,
Fourth district court of New Orleans,
(*Commercial court.*)

JOSEPH FOWLER vs. WILLIAM CHRISTY and Daniel F. Walden. } No. 864.

Petition filed in the late commercial court of New Orleans, 11th June, 1839.

To the honorable the judge of the commercial court of New Orleans:

The petition of Joseph Fowler, who resides in the city of New Orleans, respectfully shows, that William Christy and Daniel T. Walden,

who reside in the city of New Orleans, are justly and truly indebted, in solido, unto petitioner in the full sum of three thousand five hundred and thirty $\frac{4}{100}$ dollars, with dollars costs of protest, and interest at the rate of ten per centum per annum from the 18th day of December, 1838, for this, to wit: That petitioner is the holder and owner of a certain promissory note for the sum of three thousand five hundred and thirty $\frac{4}{100}$ dollars, drawn by said William Christy to the order of, and endorsed by, said Daniel T. Walden, dated at New Orleans, on the 22d day of March, 1838, and payable on the (15) fifteenth day of December ensuing, to the order of said Daniel T. Walden; and if not paid at maturity, to bear an interest of ten per cent. per annum from maturity until paid; which said promissory note, on the 18th December, 1838, day of its maturity, was duly protested for non payment, after the legal presentment for, and demand of, payment from said Christy, and that due notice of said demand and protest was given to said Daniel T. Walden, as endorser thereof; all of which will more fully appear by reference to the said promissory note, and to the protest thereof and certificate of notice, which are thereunto annexed for reference.

Petitioner further alleges, that the said William Christy and Daniel T. Walden, although thereunto amicably requested, refuse to pay the amount, for which they are indebted as aforesaid, to your petitioner. Petitioner, therefore, prays that said William Christy and Daniel T. Walden may be cited to appear and answer this petition; and that, after due proceedings, they be condemned, in solido, to pay to petitioner the aforesaid sum of three thousand five hundred and thirty $\frac{4}{100}$ dollars, with interest as aforesaid from the date aforesaid, and dollars costs of protest, and costs of suit; and petitioner asks for all general and equitable relief.

(Signed) F. B. CONRAD,
Attorney for petitioner.

Protest and note annexed to petition.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known, that on this eighteenth day of December, in the year one thousand eight hundred and thirty-eight, at the request of the City Bank of New Orleans, the holders of the original note, whereof a true copy is on the reverse side hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said note to the drawer, and demanded payment thereof, and was answered that he could not pay the same at present. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against

all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note. Thus done and protested in the presence of Lawrence Dornan and Ernest Granet, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Original signed.

H. B. CENAS, *Notary public.*
E. GRANET.
LAWR. DORNAN.

$3,530 22. NEW ORLEANS, 22*d March*, 1838.

On the fifteenth day of December next, (1838,) I promise to pay to the order of D. T. Walden three thousand five hundred and thirty dollars and twenty-two cents, for value received, and if not punctually paid to bear interest at the rate of ten per cent. per annum after maturity until paid.

WM. CHRISTY.

Endorsed—D. T. WALDEN,
JOSEPH FOWLER, *by Mr. Bogart.*

I, the undersigned, notary, do hereby certify, that the note whereof a true copy is embodied in the accompanying act of protest, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively this day, in the manner following, to wit, by delivering that for the first endorser to himself, and by delivering that for the last endorser to a clerk of Mr. W. Bogart, his agent, (he not being in.)

In faith whereof I hereunto sign my name, together with L. Dornan and E. Granet, witnesses, at New Orleans, this nineteenth day of December, 1838.

Original signed.

LAW. DORNAN.
E. GRANET.
H. B. CENAS,
Notary public.

I certify the foregoing to be a true copy of the original protest, note, and memorandum of the manner in which the notices were served.

In faith whereof I grant these presents, under my signature and seal of office, this 14th December, 1839.

[L. S.] (Signed) H. B. CENAS,
Notary public.

$3,530 22. NEW ORLEANS, 22*d March*, 1838.

On the fifteenth day of December next, (1838,) I promise to pay to the order of Daniel T. Walden three thousand five hundred and thirty dollars and twenty-two cents, for value received; and, if not punctually

paid, to bear interest, at the rate of ten per cent. per annum, after maturity, until paid.

(Signed) WM. CHRISTY.

Endorsed: D. T. WALDEN,
JOSEPH FOWLER,
By W. BOGART.

Citations.

STATE OF LOUISIANA,
Commercial court of New Orleans.

Mr. DANIEL T. WALDEN, residing in New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 11th day of June, in the year of our Lord 1839.

(Signed) ED. GARDERE, *Clerk*.

JOSEPH FOWLER
vs.
WM. CHRISTY & DANIEL T. WALDEN. } 864. [SEAL.]

Sheriff's return.

Received 11th June, 1839, and on the 12th served copy of petition and citation on D. T. Walden in person. Returned 12th June, 1839.

(Signed) GEO. W. GAVIN,
Dy. sheriff.

STATE OF LOUISIANA,
Commercial court of New Orleans.

Mr. WILLIAM CHRISTY, residing in New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 11th day of June, in the year of our Lord 1839.

(Signed) ED. GARDERE, *Clerk*.

JOSEPH FOWLER
vs.
WM. CHRISTY & DANIEL T. WALDEN. } No. 864. [SEAL.]

Sheriff's return.

Received 11th June, 1839, and on the 12th served copy of petition

and citation on Wm Christy in person. Returned 15th June, 1839.
(Signed) GEO. W. GAVIN,
Dy. sheriff.

Answer of W. Christy, filed 21st June, 1839.

COMMERCIAL COURT.

The defendants in this case, for joint and several answers in this case, deny all and singular the facts therein contained, and pray hence to be dismissed, with their costs.
(Signed) WILLIAM CHRISTY,
For defendants.

Answer of D. T. Walden, filed 28th June, 1839.

COMMERCIAL COURT OF NEW ORLEANS.

The defendant, by his attorney, by Philip Hickey, jr., now comes into court, and for answer to the petition of Joseph Fowler denies all and singular the allegations therein contained, with the exception of what is hereinafter especially admitted. He acknowledges that the note filed in the said petition was endorsed by him, but denies that he has ever received the consideration, or any consideration whatever, for his said endorsement on said note. He avers that said endorsement was made merely for said Christy's accommodation; that plaintiff, in this case, was fully aware of that fact when he took said note, and can, therefore, have no recourse against him; wherefore he prays that he may be hence dismissed, with his costs, and prays for a trial by jury. And, as in duty, &c.
(Signed) J. PHIL. HICKEY, Jr.

Notices of trial.

STATE OF LOUISIANA,
Commercial court of New Orleans.

JOSEPH FOWLER
vs.
CHRISTY & WALDEN. } No. 864.

TO WILLIAM CHRISTY:

SIR: Please to take notice, that the above entitled case is fixed for trial on Monday, the 16th day of December, 1839.
Respectfully,
(Signed) PL. DEVERGES, *Dy. clerk.*

NEW ORLEANS, *9th day of December*, 1839.

Served notice, of which the above is a copy, by delivering the same at the office of W. Christy, esq., on Monday, the 9th day of December, 1839.
Signed, R. SWAIN.

STATE OF LOUISIANA,
Commercial court of New Orleans.

Notice of trial.

JOSEPH FOWLER
vs.
CHRISTY & WALDEN. } 864.

To ——— HICKEY, jr., esq., attorney of defendant.

SIR: Please take notice that the above entitled case is fixed for trial on Monday, the 16th day of December, 1839.

Respectfully,
PL. DEVERGES, *Deputy clerk.*

NEW ORLEANS, *9th day of December*, 1839.

Served notice, of which the above is a copy, by delivering the same at the office of ——— Hickey, esq., on Monday, the 9th day of December, 1839.

Signed, R. SWAIN.

Judgment.

This case came on for trial this day before the court; F. B. Conrad, for plaintiff; P. Hickey, jr., for D. T. Walden.

The plaintiff having proved the allegation of his petition, it is considered that the plaintiff, Joseph Fowler, recover from the defendants, William Christy and Daniel T. Walden, in solido, the sum of thirty-five hundred and thirty dollars and twenty-two cents, with interest thereon, at the rate of ten per cent. per annum, from 18th day of December, 1838, until paid, and costs of suit. Rendered December 16th, 1839. Signed 20th December, 1839.

Signed, C. WATTS, *Judge.*

Sheriff's return.

Received 20th December, 1839, and on the same day served certificate of judgment on William Christy in person; and on 23d served copy of the same on D. T. Walden in person.

(Signed,) GEO. W. GAVIN,
Deputy sheriff.

Motion to issue execution.

JOSEPH FOWLER, jr.
vs.
DANIEL T. WALDEN. } (No.) 864.

On motion of F. B. Conrad, of counsel for plaintiff, ordered that defendant show cause on Tuesday next, at nine o'clock, a. m., why execution should not issue for the amount of the judgment in this case, with all interest and costs *and costs*, on the grounds on file.

(Extract from the minutes, 8th April, 1842.)

Sheriff's return.

Received April 8th, 1842, and on the 8th served copy of the within rule on the defendant in person. Returned 8th April, 1842.

(Signed,) L. A. DUCROS,
Sheriff com. court.

Grounds, filed April 8th, 1842.

On motion of F. B. Conrad, of counsel for plaintiff in the above suit, and on filing two certain promissory notes, one for $456 11, and the other for $452 38, being the same notes given by defendant to plaintiff, on account of the interest due on the judgment herein rendered, and on giving the court to be informed that, by agreement between the parties, execution was on the giving of said notes by the defendant to be stayed, on condition of the punctual payment at maturity, but which have been protested for non-payment, it is ordered by the court that defendant show cause on Monday next, the 11th instant, at half past 9 o'clock, a. m., why execution should not issue for the amount of said judgment, with all interest and costs.

Notes and protests filed with motion.

$456 11. NEW ORLEANS, 18*th May*, 1841.

Ninety days after date I promise to pay, to the order of William Christy, four hundred and fifty-six $\frac{11}{100}$ dollars, for value received.

(Signed,) D. T. WALDEN.

Endorsed—WM. CHRISTY.
JOS. FOWLER, jr.
W. BOGART & Co.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this nineteenth day of August, in the year one thousand eight hundred and forty-one, at the request of the City Bank of New Orleans, holder of the original note whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to a clerk of the drawer at his office, and demanded payment thereof; and was answered that said drawer was not then in, and had left no funds to pay the same; whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern,

for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note. Thus done and protested in the presence of E. Granet and A. Commandeur, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) H. B. CENAS, *Not. Pub.* [L. S.]

$456 11. NEW ORLEANS, 18 *May*, 1841.

Ninety days after date I promise to pay, to the order of William Christy, four hundred and fifty-six $\frac{11}{100}$ dollars, for value received.

D. T. WALDEN.

(Endorsed:) WM. CHRISTY.
JOS. FOWLER, Jr.
W. BOGART & Co.

$452 $\frac{52}{100}$. NEW ORLEANS, 18*th May*, 1841.

Sixty days after date I promise to pay, to the order of William Christy, four hundred and fifty-two $\frac{52}{100}$, for value received.

D. T. WALDEN.

(Endorsed:) WM. CHRISTY.
JOSEPH FOWLER, Jr.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known, that on this twentieth day of July, in the year one thousand eight hundred and forty-one, at the request of the Union Bank of Louisiana, holder of the original note whereof a true copy is on the reverse hereof written, I, Adolph Mazureau, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, made careful search and diligent inquiry to find the drawer of said note, and his domicil, in order to present the same for payment, but was credibly informed that he resides in the parish of Jefferson; whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said note. Thus done and protested in the presence of John Pragg and George A. Jenkins, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) [SEAL.] A. MAZUREAU, *Not. Pub.*
J. PRAGG.
GEORGE A. JENKINS.

$452 38. NEW ORLEANS, 18 *May*, 1841.

Sixty days after date I promise to pay, to the order of William Christy, four hundred and fifty-two $\frac{38}{100}$ dollars, for value received.

D. T. WALDEN.

(Endorsed:) WM. CHRISTY.
JOS. FOWLER, Jr.

STATE OF LOUISIANA,
Fourth district court of New Orleans.

I, Thomas Gilmore, clerk of the fourth district court of New Orleans, do hereby certify, that the above and foregoing 13 pages contain a full and complete transcript of the record of the case, wherein Joseph Fowler is plaintiff, and Wm. Christy and Daniel T. Walden are defendants, instituted in the late commercial court of New Orleans, under the number 864; and I do further certify, that, pursuant to an act of the legislature of the State, approved the 30th day of April, 1846, the records of the said late commercial court have been transferred to this court, and are now in my custody and possession as clerk aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this 12th [SEAL.] day of January, 1848, and in the 72d year of the independence of the United States.

T. GILMORE,
Clk. 4th dist. ct.

I, George Strawbridge, sole judge of the fourth district court of New Orleans, do hereby certify, that Thomas Gilmore is now, and was at the time of signing the foregoing certificate, clerk of the fourth district court of New Orleans, and the signature "T. Gilmore, clk. 4th dist. ct.," is in the proper handwriting of him, the said clerk; to his official acts as such full faith and credit are due and owing; and I do further certify, that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on this 13th day of January, 1848.

GEO. STRAWBRIDGE,
Judge 4th D. C.

Certificate from mortgage office, annexed to, filed, and offered with the foregoing transcript.

Office of mortgages.

The undersigned, recorder of mortgages for the parish and city of New Orleans, State of Louisiana, certifies, that in the records in his office there are no other mortgages standing in the name of Daniel Treadwell Walden, of this city, and recorded against two lots of ground, making part of the batture in front of suburb St. Mary, designated by the numbers one and two, on a plan of said batture drawn

by Joseph Pilie, surveyor, on the 29th of November, 1820; said lots adjoining each other, measuring each 29 feet 2 inches front, on New Levee street, and running in depth to the lots number 3 and 4; bounded on one side by property of James Jackson or assigns, and on the other by property now or lately belonging to the estate of Benjamin Morgan, together with the brick stores erected thereon, than the following, viz:

1. The one by him granted per act passed before Amedee Ducatel, notary, on the 20th April, 1838, in favor of Nathan Hart, of New York, to secure nineteen thousand five hundred and twelve dollars, ($19,512,) and eventual interest thereon at ten per cent. per annum.

2. The general one in favor of Joseph Fowler, resulting from a judgment rendered by the commercial court on the 16th December, 1839, against William Christy and said Walden, in solido, for three thousand five hundred and thirty dollars and twenty-two cents, ($3,530 22,) interest and costs.

3. The general one in favor of Delphen Emeree MacCarty, resulting from a judgment rendered by the same court on the 18th May, 1840, aginst said Walden, for three thousand dollars, interest and costs, ($3,000.)

4. The general one resulting from a certain judgment rendered by the judicial district court, on the 19th November instant, in the suit of Daniel T. Walden vs. the City Bank of New Orleans, No. 19,618, and which is in the words and figures following, to wit: "The court having taken this case under consideration, on the rule taken by defendant to dissolve the injunction, do, for the reasons assigned in the within opinion and judgment, this day delivered and on file, adjudge and decree, that the injunction herein issued be dissolved; and, in pursuance of the act of 1831, in relation to injunctions, it is further decreed, that judgment be entered up against D. T. Walden, John R. Grymes, and M. W. Hoffman, principal and sureties in the injunction bond, in solido, for ten per cent. per annum upon the amount of said bond as interest and damages, and for costs of this motion."

5. And the general one in favor of the Bank of the United States, resulting from a judgment rendered against said Walden by the first judicial district court, the 17th November, 1840, for twelve thousand two dollars, ($12,002,) with interest and costs; the whole agreeably to said judgments.

P. LAMREAUX.

New Orleans, the 26th November, 1840.

Objection of complainant to record offered by defendant in evidence, filed April 15th, 1850.

To the defendant proposing to offer and rely upon the record of the suit of Nathaniel Hart vs. Wm. Christy, assignee et al., instituted in the U. S. D. C. for the district of Louisiana, the complainant objects to the same as evidence, on the ground that said proceedings are "res inter alias acta," and that he was not cited therein; and thereupon

moves the court to suppress and refuse the said record; and the testimony of witnesses taken in said cause and reduced to writing, being also offered in said suit, the said motion is specially extended to said testimony as illegal.

Admission and agreement of counsel filed Sept. 11, 1850.

Admission and agreement.

J. FOWLER, JR., vs. NATHAN HART.

The complainant admits:

1st. That the property described in the petition was adjudicated to defendant by the U. S. marshal, on the 16th day of June, 1845, after the usual and legal advertisements.

2d. That an act of sale was passed from the assignee of D. T. Walden to defendant to said property, designated as No. 3, before H. B. Cenas, N. P., on the 19th June, 1845.

3d. That upon the report of the assignee being filed, and before being referred to the commissioners, publications were made in the newspapers of New Orleans, in the form prescribed by rule of court, and that like notices were given on the report of the commissioners before homologation thereof.

It is agreed that the transcript from the United States district court, dated 15th February, 1848, the transcript of extracts from report of board of commissioners, and judgment thereon; and the transcript of the petition, rule, and return, both certified 29th August, 1849, (1850?) be received and copied, with the foregoing admissions, into the record of appeal of J. Fowler, jr., as the only part of the proceedings in bankruptcy of D. T. Walden offered or used on the trial of this cause.

New Orleans, August 30th, 1850.

BENJAMIN & MICOU,
For complainant.

M. M. COHEN,
For N. HART.

Record from U. S. district court.

United States district court, in and for the district of Louisiana.

In bankruptcy of Daniel T. Walden.—No. 274.

N. HART vs. WM. CHRISTY, assignee.

Be it remembered that, on the 21st June, 1842, the following petition for an injunction was filed in the clerk's office, and reads as follows, to wit:

To the honorable T. H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana.

The petition of Daniel T. Walden, residing in the city of New Orleans, respectfully shows, that your petitioner has applied to this honorable court for the benefit of the law of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," and has, in compliance with the terms of said law, surrendered all his property, rights of property, credits, and assets of every kind and description; that he has surrendered a very large amount of property, and is indebted in a large amount of debts. He further avers, that among the debts due by him is a debt owing to one Nathaniel Hart, residing as petitioner believes in the city of New York, but represented in New Orleans by one Benjamin Hart; that among the property surrendered by him, and which together with the debt due to said Hart is mentioned in the schedule filed by petitioner of his debts and property, *is the property mentioned in the schedules filed by petitioner of his debts and property*, is the property mentioned in the advertisement hereto for reference annexed. Your petitioner shows that said Hart has, notwithstanding the surrender by him of said property to his creditors, caused the same to be seized, and is proceeding to sell the same. He avers that said proceedings and said sale about to be made are illegal [and] injurious to the interests of the mass of your petitioner's creditors, and petitioner, and will be productive of great sacrifice of said property; that the same has never been legally appraised, and that it is incompetent in creditors of petitioner to proceed to the sale of property surrendered by him as aforesaid to his creditors, and that a writ of injunction should issue, commanding V. Allain Louis Sere and said N. Hart, represented by said B. Hart, and all others who may be instrumental in selling said property, to desist from further proceeding in said sale, and he prays for a writ of injunction accordingly, and for all general relief in the premises.

Signed, F. B. CONRAD,
Att'y for petitioner.

Sworn to and subscribed before me, this 18th day of June, 1842.
(Signed) N. R. JENNINGS, *Clerk.*

Advertisement annexed to said petition.

NATH. HART
vs.
DANL. F. WALKER.

Parish court, No. 14,965.

By virtue of a writ of seizure and sale to me directed by the honorable the parish court, in and for the parish and city of New Orleans, will be sold at the City Exchange, St. Louis street, between Chartres and Royal streets, in this city, on Monday, the twentieth day of June, eighteen hundred and forty-two, at twelve o'clock, m., the hereinafter

described property, seized in the above suit, to wit: Two lots of ground forming part of the batture in front of the faubourg St. Mary in this city, designated by numbers one and two on a plan of said batture drawn by J. Pilie, the surveyor of the city, dated the twenty-ninth day of November, 1820, and deposited in the office of Hughes Lavergne, (now of William Christy,) then notary of this city; said lots adjoining each other, and measuring each twenty-nine feet two inches front on New Levee street, and running in depth between parallel lines to numbers three and four of said plan, which belong to James Jackson, his heirs or assigns; and bounded on the upper side by the property of Alexander Labranch or assigns, and on the lower side by the property now or formerly belonging to the succession of Benjamin Morgan; together with the two *two* stores, brick-built stores, on said lot constructed, and all other buildings and improvements depending of said lot, without exception or reserve. Terms cash.

m. 16, 3tin 30 d.

V. ALLAIN,
Sheriff of the parish of Orleans.

Judge's order on the foregoing petition.

Upon reading the within petition it is ordered by the court, that let a writ of injunction be issued *in*, directed to N. Hart, Louis Sere, and Victor Allain, June 21st, 1842.

(Signed) THEO. H. McCALEB,
U. S. district judge.

And on the 29th day of October, 1842, the following entry was made on the minutes, to wit:

In bankruptcy, October 29, 1842; present, the honorable Theodore H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN
vs.
WM. C. CHRISTY, assignee.

On motion of Arnold Badin, of counsel for L. B. McCarthy and for Nathaniel Hart, creditors of the bankrupt, and upon suggesting to the court that the assignee of this bankrupt has already given bond, and is in possession of all the property surrendered by the bankrupt, it is ordered, that said assignee, William Christy, esq., show cause, on Monday, the 7th of November, why he should not forthwith petition for the sale of the said property generally, as the law requires a speedy settlement of the estate; and why he should not specially be ordered to sell the real estate described in an opposition of L. B. McCarthy, filed on the 5th, upon which said McCarthy holds several mortgages, securing notes partly due; and why he should not likewise sell the following described real estate, upon which Nathaniel Hart holds special mortgages to secure notes partly due, amounting to twenty-two thou-

sand five hundred and twelve dollars, (including interest;) all said property to be sold immediately, and for cash, or such other terms as said McCarty and said Hart may hereafter respectively consent to, viz., stores of two stories each on New Levee street, near the corner of Gravier street.

And on the 7th day of November, 1842, the following entry was made on the minutes, to wit:

Monday, November 7th, 1842; present, the honorable Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN, Wm. Christy, assignee, J. B. McCarthy,
vs.
THE ASSIGNEE.

The rule taken in this matter by L. B. McCarthy and Nat. Hart, on motion of their counsel, was continued until the 11th instant.

And on the 11th day of November, 1842, the following entry was made on the minutes, to wit:

Friday, November the 11th, 1842. Present, hon. Theodore H. McCaleb.

In the bankruptcy of Daniel T. Walden. Petition of William Christy, assignee, to sell, &c.; opposition of the City Bank and other creditors.

This case being called for hearing, upon motion of the counsel for the assignee, and by the consent of counsel in behalf of opponents, it is ordered, that the trial be continued until Wednesday next, and notices be served upon the parties interested.

And on the 11th day of November, 1842, the following rule was issued from the clerk's office, to wit:

In the bankruptcy of Daniel T. Walden. Petition of Wm. Christy, assignee, to sell the slaves immediately, and defer the sale of the landed property.

In bankruptcy. United States district court, eastern district of Louisiana. Present, the hon. Theo. H. McCaleb. November 11, 1842.

The assignee of the said estate having filed in this court a petition as above described, it is ordered by the court that the hearing of the said petition be continued from Friday, the 11th instant, to Wednesday, the 16th instant, at 10 o'clock, a. m., when, as one of the mortgage creditors of said estate, you are notified to appear, and shew cause why the said assignee should not be authorized to erase and cancel all the mortgages, judgments, and liens recorded in favor of certain creditors of said estate, so that he may convey a clear and unencumbered title to any purchaser thereof, reserving to such creditors all their rights in law

to the proceeds of the sale of the said property, upon the final distribution thereof.

Copy teste.

(Signed) ED. LAUVE, *Deputy clerk.*

Special mortgages.

Bank of Louisiana; Union bank; John Vassant; Ocean Insurance company; President, Directors, & Co. of the U. S. bank of Pennsylvania, W. W. Frazier, agent; Exchange and Banking company; New Orleans Canal and Banking company; Gas Light and Banking company; L. B. McCarty; Gregorio J. Martinez Del Rio, of Mexico; Nathan Hart; Mrs. M. M. E. Montrant, wife of L. Millaudon; Mrs. M. C. Montreial, wife of F. C. Labarre; City bank; Henry A. Lea; Second Municipality.

Judicial mortgages.

Joseph Fowler; Delphin E. McCarty; Eldridge Pecker; Merchants' bank; Mayor, Alderman, et als.; Maunsel White; Peters and Millard; J. H. Leverech & Co.; Jasper Strang; J. L. Florence.

Marshal's return on said rule.

Received November the 12th, 1842, at 6½ o'clock, p. m.; and, on the 14th day of the same month and year, served a copy of the within rule on the mortgage creditors in the following manner, to wit:

On the Bank of Louisiana, on W. E. Leverech, cashier, in person; on the Union bank of Louisiana, on F. Frey, cashier, in person; on John Vassant, in person; on the Ocean Insurance company, on Chas. Breggs, sec'ry, in person; on the United States bank of Pennsylvania, on W. W. Frazier, agent, in person; on the Exchange bank, on J. B. Hullin, in person; on the Canal bank, on R. C. Cammack, paying teller, in person; on the Gas bank, on J. W. Houston, cashier, in person; on Louis B. Macarty, on August Delassuse, agent, in person; on Gregorio J. Martinez Del Rio, of Mexico, on Schmidt & Co., agents, in person; on Nathan Hart, in person; on Mrs. M. M. E. Montreuil, wife of Laurent Millandon, on L. Millaudon, in person; on Mrs. M. D. Montreuil, wife of J. P. Labarre, on Laurent Millaudon, in person, (who accepted service of the same;) on the City bank of New Orleans, on R. J. Palfrey, cashier, in person; on Henry A. Lea, by leaving the same at domicil in the hands of his father; on the Second Municipality, on Joshua Baldwin, (the) recorder, in person; on Joseph Fowler, in person; on Delphine E. Macarty, in person; on Eldridge Parker, on F. B. Conrad, agent, in person; on the Merchant's bank, by leaving the same at the office of the commissioners; on the Mayor, Alderman & Co., on the Mayor, in person; on Jasper Strang, on J. H. Leverech, agent, in person; on J. L. Florence, on his agent, H. E. Florence, in person; on Maunsel White, by leaving the same at his office in the hands of C. Bullett; on Peters & Millard, by leav-

ing the same at their store; on J. H. Leverech & Co., by leaving the same at their store in New Orleans.

(Signed) For A. SYDNEY ROBERTSON,
U. S. marshal.
J. E. LAYET, *deputy U. S. M.*

And further, on the 11th day of November, 1842, the following opposition of N. Hart was filed in the clerk's office, to wit:

In the bankruptcy of D. T. WALDEN.

District court of the United States.

The opposition of Nathaniel Hart, of New Orleans, respectfully sheweth: That he is a creditor by special mortgage for a sum of $, as evidenced by the annexed notes and documents. That he requires the sales of the property mortgaged in his favor, and described in the accompanying act, to be sold for cash, and immediately; wherefore, he opposes the petition for sale filed by the assignee, and prays that the present application be maintained, &c.

(Signed) For J. R. GRYMES.
ARNOLD BODEN, *Attorney.*

And on the 16th day of November, 1842, the following entry was made on the minutes, to wit:

Wednesday, November 16th, 1842.

Present, the honorable Theodore H. McCaleb.

In the bankruptcy of DANIEL T. WALDEN, petition of assignee to sell. Opposition of certain creditors.

The petition of said assignee being this day called for hearing, praying that the sale of the property surrendered by the bankrupt may be deferred to a certain time, and be sold upon certain terms. The following named mortgage creditors appeared by their respective attorneys, and opposed the prayer of the petition, upon grounds, as follows:

1st. The New Orleans Gas Light and Banking Company, represented by their attorney, George Strawbridge, esq., opposed the petition and prayed that the property upon which they hold a mortgage may be sold for cash, enough to satisfy the mortgage.

2d. L. B. McCarty, represented by A. Boden, esq., of counsel, opposed, and represented that, being a mortgage creditor to the amount of thirty-two thousand dollars, he prays that the mortgage to secure the payment be sold upon a credit of sixty days.

3d. C. Adams, jr., and W. A. Frazier, receivers, appointed in the case of the United States vs. the President and Directors of the Bank of the United States, represented by Thomas Slidell, attorney, prayed that the property upon which the said bankrupt holds a judicial mort-

gage be sold for one-fifth cash, and the balance upon a credit of one year.

4th. Nathaniel Hart, a creditor to the amount of $, opposes, and prays that the property upon which he holds a mortgage, be sold immediately and for cash; represented John Grimes, esq., of counsel.

5th. The Union Bank, represented by their attorney, H. R. Dennis, esq., opposes, and prays that the stock pledged upon certain property be sold with the property *be sold with the property*, and for cash enough to pay what is due on said stock.

6th. The following opponents, to wit, the City Bank, Peters & Millard et als., represented by Locket and Micou, attorneys; the Bank of Louisiana, represented by Levi Pierce, attorney; J. L. Florence, esq., represented by A. K. Josephs, esq., specially object to the jurisdiction of the court, and deny that they are partners to the proceedings. After argument of counsel upon these several oppositions, the court ordered that the same be continued until Wednesday next, at 10 o'clock, a. m.

And on the 23d day of November, 1842, the following entry was made on the minutes, to wit:

Wednesday, November 23d, 1842. Present, hon. Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN
[vs.]
WM. CHRISTY, assignee, petition to sell, &c.

The argument in this matter was to-day resumed. M. W. Hoffman on behalf of the chirography creditors. The court took time to consider upon the oppositions filed by the mortgage creditors, and the injunction at the suit of the City bank; and it further appearing that no opposition has been made or filed to that part of the petition of the assignee to sell a certain part of the property surrendered by the bankrupt, as set forth in the petition of said assignee, consisting of slaves, and that notice of the same has been duly published, it is ordered, that the assignee be authorized to sell the said property upon the terms suggested by the assignee, the same to be advertised in the Commercial Bulletin and the Tropic, three insertions in each paper, in English.

And on the 24th day of November, 1842, the following entry was made on the minutes, to wit:

Tuesday, November 24th, 1842. Present, hon. Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN, Nathan'l Hart, mortgage creditor,
vs.
THE ASSIGNEE, WM. CHRISTY, in his petition to sell.

On motion of John R. Grymes, of counsel for Nath. Hart, mortgage creditor of the estate of the bankrupt, Daniel T. Walden, and upon

shewing to the court the mortgage held by him resting upon said property, and that he opposes the prayer of said petition of the assignee, and prays that the said property mortgaged to secure his debt be sold for cash enough to satisfy said mortgage. The said property to be advertised twenty days before the day of sale, in the Commercial Bulletin and the Tropic, and in any other paper at the discretion of the assignee to benefit the sale. The day of sale and place of selling to be fixed by the assignee.

And on the 8th day of December, 1842, the following entry was made on the minutes, to wit:

Tuesday, December 8th, 1842. Present, hon. Theo. H. McCaleb.

In the bankruptcy of—

D. T. WALDEN
[vs.]
PETITON of assignee to sell, &c.

Upon motion of the counsel for the assignee of the estate of the bankrupt, and it being shown to the court that the following mortgage creditors, L. B. McCarty, Nathan Hart, M. Millaudon, and M. Labarre, by agreement with said assignee, withdraw their previous opposition and consent thereto. It is ordered, that the several properties mortgaged to the said opponents be sold by the assignee at Bank's Arcade, in all the month of January next, on the following terms and conditions, to wit: One-fifth part of the purchase money to be paid cash, and the balance in 12 and eighteen months from the day of sale, for approved endorsed notes, secured by a special mortgage on the property sold; such properties as may be a lease to the 31st day of March next, to be sold subject to such leases; the purchaser or purchasers to receive the rent from the day of sale; the property to be advertised twenty days before the day of sale, in the Commercial Bulletin and the Tropic newspapers, published in this city.

And on the 16th day of December, 1842, the following entry was made on the minutes, to wit:

Friday, December 16th, 1842. Present, hon. Theo. H. McCaleb.

In the bankruptcy of Daniel T. Walden, 274.

Order of sale by consent of parties.

Upon motion of the counsel for the assignee, and it being shewn to the court that the mortgage creditors named as follows consented thereto, to wit, Nathan Hart, L. B. McCarthy, Madame Millaudon, and Madame Labarre; it is ordered that the property and real estate surrendered by the bankrupt, upon which the aforesaid creditors hold a special mortgage, as exhibited and set forth upon the schedule filed by the

assignee, and annexed to this order, to be sold upon the following terms, to wit:

One-fifth cash, and the balance upon a credit of twelve and eighteen months, with approved endorsed notes, secured by special mortgage upon the property sold; and it appearing to the court that the United States bank and the Gas Light bank of this city, represented by their attorneys, Strawbridge and Slidell, object to any terms of credit for the sale of the property specially mortgaged to secure their claim, it is further ordered, that the assignee be directed to sell the property thus mortgaged to said creditors for cash, according to the said schedule; the time of the sale of all of the said property to be in all the month of January next; the property to be advertised at least twenty days before the sale in the New Orleans Bee and Tropic, as often as said assignee may deem necessary to benefit the estate.

And on the 23d day of February, 1843, the following entry was made on the minutes, to wit:

Thursday, February 23d, 1843. Present, hon. Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN, Nat. Hart, } vs. WM. CHRISTY, assignee. } 274.

On motion of John R. Grymes, for Nathan Hart, a mortgage creditor of said bankrupt, and suggesting to the court that the property mortgaged to the said Hart has been sold by the assignee, under the order of court, for one-fifth of the purchase money in cash, and the balance in endorsed notes at 12 and 18 months' credit, it is ordered, that Wm. Christy show cause, on Thursday next, the 2d day of March, why the proceeds of the said mortgaged property, in money and notes, should not be paid over to said Hart in satisfaction of said mortgage and interest due thereon; and that, inasmuch as an execution has been levied, in the hands of the assignee, by the Bank of the United States, it is ordered that C. Adams, jr., and W. W. Frazier, receivers of said bank, also show cause, on that day, why this rule should not be made absolute.

Marshal's return of the copy of said rule.

Received Feb'ry 28th, 1843, and same day I served a copy of the within rule on William Christy, assignee, he being absent, by leaving the same at his office in the hands of his son, George Christy; and on the 1st March, 1843, I served copies of the same on C. Adams, jr., on W. W. Frazier, receivers of the Bank of the United States, in person, at New Orleans.

(Signed.) A. SIDNEY ROBERTSON,
U. S. marshal.
By D. O. NADAND,
D'y U. S. mar.

And on the 2d day of March, 1843, the following entry was made on the minutes, to wit:

Thursday, March 2d, 1843. Present, hon. Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN, Nat. Hart,
vs.
WM. CHRISTY, assignee.

This rule came up to-day for hearing, and by consent of parties was continued until Thursday next.

And on the 8th day of March, 1843, the following receipt was given in the clerk's office, to wit:

Received from Mr. Jennings, clerk of the United States court, D. T. Walden's note, dated April 20th, 1838, for $19,512, payable one year after date to the order of H. A. Lee; which note has been delivered to me for the purpose of effecting a settlement with the assignee.

(Signed.) For NATHAN HART,
JACOB HART.

And on the 9th day of March, 1843, the following entry was made on the minutes, to wit:

Thursday, March 9th, 1843. Present, hon. Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN,
NATHANIEL HART
vs.
WM. CHRISTY, assignee et als.

The rule as taken in this cause, as entered on the 23d February, being called for trial, the assignee being present, and John R. Grymes, esq., for the plff. in rule; Balie Peyton, esq., attorney for W. Frazier, and C. Adams, jr.; after argument of counsel, it is ordered that the rule be made absolute, the assignee reserving whatever sum the sale of the property sold may have produced over and above the amount of the mortgage to the said Hart, and interest thereon; also the amount due for taxes on said property to the amount of $554; and also four per cent. out of the cash on the whole amount to be paid over, which per centage is intended to meet whatever additional costs and charges the property, or the amount it sold for, may have to contribute on a final settlement of the affairs of the said bankrupt; and the defendants, Frazier & Adams, jr., shewing no cause why the said rule should not be made absolute against them, it is ordered, therefore, that the said rule be made absolute against all the parties.

And on the 10th day of March, 1843, the following entry was made on the minutes, to wit:

Friday, March 10th, 1843. Present, hon. Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN,
N. HART,
vs.
WM. CHRISTY, assignee. } 274.

Upon motion of John R. Grymes, of counsel for N. Hart, it is ordered by the court that, in addition to the order granted on the 9th instant in the above entitled rule, the following be added: That in the settlement and payment over to the said Hart, that the said assignee do allow interest at the rate of ten per cent. per annum on the notes of John McDonough, the purchaser of the mortgage property, from the date thereof until their maturity.

And on the 24th day of March, 1843, the following petition was filed in the clerk's office, to wit:

To the honorable Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, in bankruptcy sitting:

The petition of Nathan Hart, who avers that he is a citizen of the State of New York, respectfully shews, that on the 22d day of May, in the year 1838, he loaned to Daniel T. Walden, then and now a citizen of the State of Louisiana, residing within the jurisdiction of this court, at New Orleans, the sum of eight thousand six hundred and fifty-five dollars, upon consideration that the payment thereof should be, together with the interest accruing, secured by mortgage on good and sufficient real property in the city of New Orleans. That accordingly the said Daniel T. Walden, on the said 22d day of May, 1838, make and execute in due and legal form, before Amedee Ducatel, a notary public at New Orleans, an act purporting to be a mortgage upon a certain lot or parcel of ground, situated in the said city of New Orleans, together with the buildings thereon, which are particularly described and set forth in the duly certified copy of said act hereto annexed, marked "A," and made part of this petition. Now, your petitioner avers, that the lot or parcel of ground and the buildings thereon described in said act of mortgage was not, at the time of the execution of said act, the property of the said Daniel T. Walden, nor had he ever any right or title thereto, but that the same was then, has ever been, and is now, the property of Isaac T. Preston, of New Orleans.

Your petitioner alleges, that when the said sum of money was loaned to the said Walden by your petitioner, and the said mortgage was executed in pursuance of the condition of said loan, it was not the intention of your petitioner to take or receive a mortgage upon the property actually described in the said act, as such a mortgage would have been utterly useless, and no avail in securing the debt aforesaid; nor does he believe that the said Daniel T. Walden intended to impose

upon him a mortgage upon the property of another. Your petitioner alleges, that when the said loan was made to the said Daniel T. Walden, it was agreed between him, the said Walden, and Benjamin Hart, the attorney in fact of petitioner, that the same should be secured by mortgage on a lot of ground, with the buildings thereon, to be described as a lot of ground designated as No. 2, on New Levee street, between Julia and Saint Joseph streets, measuring eighteen feet ten inches front on New Levee street, by one hundred and twenty-four feet seven inches deep on the dividing line of lot No. 3, and one hundred and twenty-three feet eight and one-third inches deep on the dividing line of lot No. 1, and about twenty-one feet eight inches wide in the rear, and on the dividing line of lot No. 5, which said last mentioned and described lot was then the property of the said Walden, and was the lot intended by the said Walden to be mentioned and described in the said act, and the one intended and agreed to be accepted by the attorney in fact of your petitioner as aforesaid. Your petitioner alleges, that the said notary public, being charged with the preparing said act and examining the titles of the said Walden to the property to be mortgaged thereby, as is the customary usage in the city of New Orleans, in consequence, as petitioner believes, of the confused and complicated state of titles arising from the divisions and subdivisions of the larger portions of land into many lots of smaller dimensions, and the various acts of sale, exchange, and barter between the said Walden and the said Preston, who had jointly owned the larger portion of land so divided, mistook the lot intended to be mortgaged to your petitioner for one actually inserted in the said act before referred to, as your petitioner verily believes. But so it is, that from that or some other cause, to petitioner unknown, a lot that was not, and never had been, the property of said Walden, was inserted in said act, to the great loss and injury of petitioner, and to the effect, if not relieved under the equitable powers of this honorable court, of depriving him of all security for his loan aforesaid, with the interest due thereon, contrary to the express understanding, agreement, and intentions of the said Walden and your petitioner, through his said attorney.

Petitioner avers, that the said Walden continued in the possession of the above described lot of ground, intended as aforesaid to be mortgaged to petitioner until on or about the day of , when he applied to this honorable court for the benefit of the act of Congress, approved August 19th, 1841, entitled an act to establish a uniform system of bankruptcy throughout the United States; whereupon such proceedings were had that the said Walden was declared a bankrupt within the meaning of said act, and William Christy, of New Orleans, appointed assignee of his estate and effects; all which proceedings will appear from inspection of the record of this honorable court. Your petitioner avers that the above described lot of ground, and the buildings thereon, were never mortgaged or encumbered by the said Walden in favor of any other person, but passed to the said assignee without any special mortgage, lien, or encumbrance, except the equitable

lien or mortgage of petitioner, arising [from] facts and circumstances above set forth. Your petitioner further shows, that it was not until after the bankruptcy of the said Walden he discovered or even suspected such a mistake had occurred in relation to said act. Petitioner avers that the said assignee, William Christy, refuses to correct the said mistake, or to recognise petitioner's mortgage as existing on the said last mentioned lot and the buildings thereon.

Petitioner further shows, that there is now due to him, on his said mortgage, the sum of eight thousand six hundred and fifty-five dollars capital, with interest thereon at the rate of ten per centum per annum, from the 25th day of May, 1839, until final payment. Wherefore he prays that the said Wm. Christy, assignee, and the said Daniel T. Walden, be cited to answer this petition, and the averments and allegations thereof specially and fully, as if thereon interrogated; and further, that the said Daniel T. Walden be ordered by the court to answer in writing, under oath, the interrogatories hereto appended. Petitioner prays for general and equitable relief in the premises, and that the honorable court do grant him such remedy as justice and the nature and circumstances of his case require, by decreeing that the above described lot, No. 2, is subject to petitioner's lien and mortgage, and be sold, and the proceeds applied to the payment of his lien, and the interest thereon due.

Interrogatories to be answered by Daniel T. Walden on oath.

First. Did the lot of ground mentioned in the act (a copy of which, marked A, is hereto annexed,) belong to you on the day of the execution of said act, to wit, the 22d day of May, 1838, or did you, before or at that time, or since, have any title to or interest therein? If yea, set forth the same.

Second. To whom did the same then belong, and to whom has it ever since belonged?

Third. At the time you negotiated and obtained the loan intended to be secured by the said act of mortgage from Benjamin Hart, the attorney in fact of plaintiff, did you intend to mortgage the said lot and buildings, as described and set forth in said act; and was that the lot and buildings offered by you to, and accepted by, said Benjamin Hart as security for said loan and the interest thereon? If nay, state what lot was intended by you to be so mortgaged and offered to, and accepted by, said Hart. Set forth the same fully.

Fourth. Did you not offer and intend to mortgage the lot No. 3, and the buildings thereon, as described in the following petition, viz., a lot of ground No. 3, on New Levee street, between Julia and St. Joseph streets, measuring 18 feet 10 inches front on New Levee street, by 124 feet 7 inches deep on the dividing line of lot No. 3, and 123 feet 8½ inches on the dividing line of lot No. 1, and about 21 feet 8 inches wide in the rear, on the dividing line of lot No. 5; and was this not the

lot and buildings accepted by the plaintiff's attorney, and upon which mortgage he agreed to lend the money?

Fifth. How did it happen that the wrong lot, and one that did not belong to you, was inserted in the said act of mortgage; was it not by inadvertence or mistake? If you know, set forth fully what caused and who made the mistake; set forth your whole knowledge upon the subject of this interrogatory fully and at large.

Sixth. Did you not consider the said lot set forth and described in the fourth interrogatory as mortgaged to the plaintiff until and up to the time you filed your petition in bankruptcy?

Seventh. Had you before the mortgage to the plaintiff, or did you subsequently, mortgage or encumber the said lot in favor of any other person?

(Signed,) JOHN R. GRYMES, *for petitioner.*

Judge's order on said petition.

Let this petition be filed, and let the bankrupt, Daniel T. Walden, answer on oath the interrogatories annexed *to* thereto.

THEO. H. McCALEB, *U. S. judge.*

And further, on the 24th day of May, 1843, a certain document, marked D, was filed in the clerk's office, which document is in the words and figures following, to wit:

STATE OF LOUISIANA, *city of New Orleans.*

Before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn, this day personally appeared Isaac Trimble Preston, of this city, who declared that, for and in consideration of the terms and conditions hereinafter mentioned, he does by these presents grant, bargain, transfer, sell, convey, and deliver, unto Daniel Treadwell Walden, of this city, present and accepting, and who hereby acknowledges possession thereof, the undivided half of the following described property, to wit, a certain lot of ground, number two, and the house, number one hundred and nine, situate in the faubourg Saint Mary, between St. Joseph and Julia streets, measuring eighteen feet ten inches front on New Levee street, by one hundred and twenty-four feet seven inches deep on the dividing line of lot number three, and one hundred and twenty-three feet eight and one-third inches deep on the dividing line of lot number one, and about twenty-one feet eight inches in the rear of the dividing line of lot number five, all English measure, together with all the buildings, rights, ways, and privileges thereunto belonging. The whole per plan made by Charles F. Zimpel, deputy surveyor of the United States, dated the eighth day of February, eighteen hundred and thirty-five, and annexed to an act in this office dated the twelfth day of May of the same year.

This said lot, with lots numbers one and three, are subdivisions of

three certain lots of ground situate on the batture in the faubourg St. Mary, between St. Joseph and Julia streets, each marked by the letters Q, R, and Maxil, adjoining each other; all will be more fully seen by a plan annexed to an act in this office dated the sixth day of May, (1834,) eighteen hundred and thirty-four. The herein described property was acquired by purchase of the succession of the late Nathaniel Emerson, per act in this office dated the twelfth day of May, eighteen hundred and thirty-five; and the said Isaac T. Preston sold the undivided half of the aforesaid property to the said D. T. Walden, per act in this office dated the twenty-eighth day of May, eighteen hundred and thirty-five; and upon which said lot of ground and two other lots, agreeably to a certificate of the recorder of mortgages of this city, dated the twenty-first day of March, eighteen hundred and thirty-eight, hereto annexed, there appears to exist a special mortgage granted by said vendor in favor of the succession of the late Nathaniel Emerson, per act in this office dated the twelfth day of May, eighteen hundred and thirty-five, to secure the sum of twenty-two thousand six hundred dollars; and also an assumption by Daniel T. Walden, per act in this office dated the twenty-eighth day of May, eighteen hundred and thirty-five, on the undivided half of said lots of ground, to amount of eleven thousand three hundred dollars; which said mortgage and assumption of mortgage the parties concerned hereby obligate themselves to release forthwith.

This sale is made for and in consideration of the sum of five thousand dollars, payable in manner following:

First. In the promissory note of said Daniel T. Walden, dated the nineteenth day of March, eighteen hundred and thirty-eight, to the order of the Ocean Insurance company, at six months after date, for two thousand five hundred dollars, $2,500.

Second. In the promissory note of the same, dated on the same day, to the same order, at twelve months after date, for the same amount, $2,500, (making) $5,000. Making together the sum aforesaid, of five thousand dollars, which said notes the said vendor hereby acknowledges to have received after the same had been marked "ne varietur" by said notary to identify them with this act; and to secure the payment of the aforesaid notes, with all interest and costs, the said purchaser hereby mortgages and specially hypothecates the undivided half of the herein described property, promising and binding himself not to alienate or encumber the same to the prejudice of this said act; and to this act intervened and appeared Madame Catharine Lawn Layton, of lawful age, wife of the said Isaac Trimble Preston, and duly authorized by him, who declared that it is her intention to renounce her rights of lien and mortgage on the property herein sold:

First, for the restitution of her dowry and for replacing dotal effects brought at the time of her marriage, and which have been alienated by her said husband.

Second. For the restitution of dotal effects acquired during marriage, by inheritance or otherwise.

lot and buildings accepted by the plaintiff's attorney, and upon which mortgage he agreed to lend the money?

Fifth. How did it happen that the wrong lot, and one that did not belong to you, was inserted in the said act of mortgage; was it not by inadvertence or mistake? If you know, set forth fully what caused and who made the mistake; set forth your whole knowledge upon the subject of this interrogatory fully and at large.

Sixth. Did you not consider the said lot set forth and described in the fourth interrogatory as mortgaged to the plaintiff until and up to the time you filed your petition in bankruptcy?

Seventh. Had you before the mortgage to the plaintiff, or did you subsequently, mortgage or encumber the said lot in favor of any other person?

(Signed,) JOHN R. GRYMES, *for petitioner.*

Judge's order on said petition.

Let this petition be filed, and let the bankrupt, Daniel T. Walden, answer on oath the interrogatories annexed *to* thereto.

THEO. H. McCALEB, *U. S. judge.*

And further, on the 24th day of May, 1843, a certain document, marked D, was filed in the clerk's office, which document is in the words and figures following, to wit:

STATE OF LOUISIANA, *city of New Orleans.*

Before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn, this day personally appeared Isaac Trimble Preston, of this city, who declared that, for and in consideration of the terms and conditions hereinafter mentioned, he does by these presents grant, bargain, transfer, sell, convey, and deliver, unto Daniel Treadwell Walden, of this city, present and accepting, and who hereby acknowledges possession thereof, the undivided half of the following described property, to wit, a certain lot of ground, number two, and the house, number one hundred and nine, situate in the faubourg Saint Mary, between St. Joseph and Julia streets, measuring eighteen feet ten inches front on New Levee street, by one hundred and twenty-four feet seven inches deep on the dividing line of lot number three, and one hundred and twenty-three feet eight and one-third inches deep on the dividing line of lot number one, and about twenty-one feet eight inches in the rear of the dividing line of lot number five, all English measure, together with all the buildings, rights, ways, and privileges thereunto belonging. The whole per plan made by Charles F. Zimpel, deputy surveyor of the United States, dated the eighth day of February, eighteen hundred and thirty-five, and annexed to an act in this office dated the twelfth day of May of the same year.

This said lot, with lots numbers one and three, are subdivisions of

three certain lots of ground situate on the batture in the faubourg St. Mary, between St. Joseph and Julia streets, each marked by the letters Q, R, and Maxil, adjoining each other; all will be more fully seen by a plan annexed to an act in this office dated the sixth day of May, (1834,) eighteen hundred and thirty-four. The herein described property was acquired by purchase of the succession of the late Nathaniel Emerson, per act in this office dated the twelfth day of May, eighteen hundred and thirty-five; and the said Isaac T. Preston sold the undivided half of the aforesaid property to the said D. T. Walden, per act in this office dated the twenty-eighth day of May, eighteen hundred and thirty-five; and upon which said lot of ground and two other lots, agreeably to a certificate of the recorder of mortgages of this city, dated the twenty-first day of March, eighteen hundred and thirty-eight, hereto annexed, there appears to exist a special mortgage granted by said vendor in favor of the succession of the late Nathaniel Emerson, per act in this office dated the twelfth day of May, eighteen hundred and thirty-five, to secure the sum of twenty-two thousand six hundred dollars; and also an assumption by Daniel T. Walden, per act in this office dated the twenty-eighth day of May, eighteen hundred and thirty-five, on the undivided half of said lots of ground, to amount of eleven thousand three hundred dollars; which said mortgage and assumption of mortgage the parties concerned hereby obligate themselves to release forthwith.

This sale is made for and in consideration of the sum of five thousand dollars, payable in manner following:

First. In the promissory note of said Daniel T. Walden, dated the nineteenth day of March, eighteen hundred and thirty-eight, to the order of the Ocean Insurance company, at six months after date, for two thousand five hundred dollars, $2,500.

Second. In the promissory note of the same, dated on the same day, to the same order, at twelve months after date, for the same amount, $2,500, (making) $5,000. Making together the sum aforesaid, of five thousand dollars, which said notes the said vendor hereby acknowledges to have received after the same had been marked "ne varietur" by said notary to identify them with this act; and to secure the payment of the aforesaid notes, with all interest and costs, the said purchaser hereby mortgages and specially hypothecates the undivided half of the herein described property, promising and binding himself not to alienate or encumber the same to the prejudice of this said act; and to this act intervened and appeared Madame Catharine Lawn Layton, of lawful age, wife of the said Isaac Trimble Preston, and duly authorized by him, who declared that it is her intention to renounce her rights of lien and mortgage on the property herein sold:

First, for the restitution of her dowry and for replacing dotal effects brought at the time of her marriage, and which have been alienated by her said husband.

Second. For the restitution of dotal effects acquired during marriage, by inheritance or otherwise.

Third. For the restitution of such of her paraphernal property and funds as are or shall be alienated by her said husband or by herself, the price of which her husband has received or otherwise disposed of for his individual interest, or of which he has had the administration, or has been otherwise benefitted.

And I, the said notary, did carefully explain to the said Madame Preston the several articles contained in the new civil code of this State, to wit, the first and second numbers of articles 2355, 2367, and 3286, and the first and second numbers of article 3287; also the seventh number of article 3158, and the article 3182, as well as all others that may be in force in this said State; and informed her of the nature and extent of the advantages thus secured to her by law, and of her rights, and the contract she is now entering into, and stated that, by making her renunciation she would deprive herself of all reclamation on the property sold as aforesaid; and all this was done apart and out of the presence of her said husband.

Upon which the said Madame Preston declared that she consents to said sale, thereby abandoning all her rights of mortgage, or otherwise, upon the property aforesaid, and renouncing now and forever her said rights and liens, whether the same be secured to her by the above recited articles, or any other articles of the said new civil code, or by the old civil code of this State, or by any Spanish laws now in force in cases not provided for by the new civil code, and finally by any laws of this State that have been enacted subsequently to the promulgation of the new code; hereby ceding, transferring, and conveying the same to the said Daniel Walden, heirs and assigns forever, and binding herself, her heirs and assigns, to hold valid this said act of renunciation; her said husband being now present, and authorizing her in the premises.

To have and to hold the aforesaid property unto the said purchaser, to his proper use and behoof forever; and the said vendor, for himself and his heirs and assigns, unto the said purchaser, his heirs and assigns, the herein described property, against the legal claim and claims of all and every person and persons whomsoever, shall and will forever warrant and defend by these presents, hereby subrogating and transferring to said purchaser all his rights of warranty and action against his vendor and all preceding vendors, with full power to exercise the same according to law.

Done and passed at New Orleans, this twenty-third day of March, eighteen hundred and thirty-eight, in presence of William T. Lewis and Gustavus Harper, both of this city, witnesses, who have hereunto signed their names with said parties and me the said notary.

(Signed) ISAAC T. PRESTON,
CATHARINE LAWN PRESTON,
D. T. WALDEN,
WILLIAM T. LEWIS,
GUSTAVUS HARPER,
W. Y. LEWIS, *Not. public.*

A true copy of the original, New Orleans, 27th February, 1843.
(Signed) W. Y. LEWIS, *Not. public.*

And further, on the 24th day of May, 1843, a certain document, marked "exhibit A," was filed in the clerk's office; which document is in the words and figures following, to wit:

En la ville de la Nouvelle Orléans, dans l'Etat de la Louisiane, ce ving-deux Mai, mil huit cent trente-huit, l'an soixante-deux de l'indépendance Americane.

Pardevant Amedee Ducatel, notaire public dans et pour cette ville et la paroisse d'Orléans, en présence des témoins ci-après nommés et soussignés, a personnellement comparu Monsieur Daniel T. Walden, demeurant en cette ville.

Lequel reconnait par ces présentes devoir bien et légitimement la somme de huit mille six cent cinquante-cinq piastres à Mr. Nathan Hart, de New York, en pour prêt de pareille somme qu'a bien voulu lui faire Mr. Benjamin Hart, de cette ville, mandataire de ce dernier en virtue de la procuration qu'il lui a donné suivant acte passé devant George Carter, notaire, New York, en date du premier Novembre, mil huit cent trente-quatre laquelle *laquelle* procuration est annexée à un acte devant Felix Grima, notaire, en cette ville, en date du quatre Mai, mil huit cent trente-cinq.

Laquelle somme de huit mille six cent cinquante-cinq piastres le dit Sieur D. T. Walden s'oblige à rembourser dans un an à partier de ce jour; et pour faciliter au dit Sieur Nathan Hart ou à son procureur fondé la negociation de cette creance, il a tout présentement souscrit un billet de pareille somme de huit mille six cent cinquante-cinq piastres, date de ce jour, et payable à l'ordre de Mr. H. A. Lee, qui l'a endorsé à un an de date. Lequel billet, signé et paraphé ne varietur par le notaire soussigné, pour l'identifier avec les présentes, a été remis au dit Sieur Benjamin Hart en sa dite qualité, que le reconnait et s'en fait charge.

Il est expressement convenu, entre les parties aux présentes, qui dans le cas ou ce billet ne serait pas exactement payé lors de son exigibilité il portera intérêt à raison de dix pour cent l'an du jour de sous écheance presqu'à parfait paiement, sans que par cette clause le dit Sieur Daniel T. Walden soit autorisé à en retarder le paiement, cette faculté lui etant au contraire formellement interdite.

Et pour assurer et guaranter tout le paiement au sus dit billet, que le paiement de tous inétrêt eventuels ci-divers stipulés, le dit Sieur Daniel T. Walden affecte, oblige, hypothèque, spécialment et par privilege, en faveur du dit Sieur Nathan Hart, ce accepté par le dit Sieur Benjamin Hart, en present en sa dite qualité, pour le Sieur N. Hart, et pour tous porteurs du susdit billet, un lot de terre, situé au faubourg St. Marie, entre les rues St. Joseph et Julie, mesurant vingt-trois pieds deux pouces, ou à peut près, face à la rue de la Nouvelle Levee, sur cent vingt-trois pieds huit pouces et demie de profondeur, sur la ligne qui le separe du lot No. deux, et cent vingt-deux pieds neuf pouces trois quarts sur la ligne près de la rue Julie, et enfin vingt-

un pieds huit pouces dans la ligne de profondeur qui le separe du lot No. six, ensemble les batures, constructions, circonstances, et dependances, au dit lot de terre, sans aucune exception ni reserve.

Let lot de terre, appartient au Sieur Walden au moyen de l'acquisition qu'il en a faite, savoir, d'une mortre indivisé de Mr. Isaac T. Preston, suivant acte au rapport de W. Y. Lewis, notaire, en date du vingt-huit Mai, mil huit cent trente-cinq; et de le l'autre mortre indivisé au moyen de l'acte d'échance fait entre lui et le dit Sieur I. T. Preston, par acte ou rapport du même notaire Lewis, en date du vingt-trois Mars dernier, (1838.)

Et comme garantre additionelle le dit Sieur Daniel T. Walden declare qu'il vent et entend que le present acte importe confession de jugement et execution, parce.

Le dit Sieur Daniel T. Walden déclare, qui les batistes que ce trouvent sur le dit lot de terre sont assurées contre les risques du feu à la C'ie dite Commercial Ins'ce C'nie en cette ville, et s'oblige à en transferer la policé au St. N. Hart, ou à son procureur fondé et l'autorisé à l'expiration de la dite policé, dans le cas ou lui du Mr. Walden le na renouvellerait pas à le'faire faire aux frais du dit Sieur Walden.

Il n'y a point d'hypothèque inscrite contre le dit Sieur Daniel T. Walden, sur la propriété présentement hypothèque, ainsi qu'il appert du certificat du conservateur des hypothèques en cette ville, en date de ce jour et ci-annexé pour recours:

Dont acte, fait et passé à la Nouvelle Orléans, en l'étude, le jour, le mois, et l'an sus dits, en presence de Messieurs Edouard Lavergne et Rosemond de Armas, témoins compétens, qui ont signé avec les comparans et le notaire, après lecture faite.

(Signé) B. HART.
D. WALDEN.
ROSEMOND DE ARMAS.
E. LAVERGNE.
A. DUCATEL, Not. Pub.

(Signé) AMEDEE DUCATEL,
Not. Pub.

And further, on the 24th day of May, 1843, a certain document, purported to be an act of mortgage from D. T. Walden in favor of N. Hart, was filed in the clerk's office; which document is in the words and figures following, to wit:

En la ville de la Nouvelle Orléans, dans l'Etat de la Louisiane, ce vingt Avril, mil huit cent trente huit, et dans la soixante deuxième de l'independance Americaine.

Pardevant Amedée Ducatel, notaire public, dument commissioné pour cette ville et la paroisse d'Orélans, y residant, et en présence des témoins ci-après nommés et soussignés. A comparu Monsieur Daniel T. Walden, demeurant en cette ville.

Lequel reconnait par ces présentes devoir, bien et légitimement, la somme de dix neuf mille cinq cent douze piastres à Mr. Nathan Hart,

New York, (E. U.), pour près de pareille somme qu'a bien voulu lui faire Mr. Benjamin Hart, de cette ville, mandataire de ce dernier, en vertu de la procuration qu'il lui a donné suivant acte passé devant George Catlin, notaire à New York, en date du premier Novembre, mil huit cent trente quatre, laquel procuration est annexée à un acte devant Felix Grima, notaire, en cette ville, en date du quatre Mai, mil huit cent trente-cinq.

Laquelle somme de dix neuf mille cinq cent douze piastres le dit sieur Dl. T. Walden s'oblige à rembourser dans un an à partir de ce jour, et pour faciliter au dit sieur Nathan Hart, ou à son procureur, fondé la negociation de cette creance, et à tout présentement souscrit, un billet de pareille somme de dix neuf mille cinq cent douze piastres, daté de ce jour, et payable à l'ordre de Mr. H. A. Lee, qui l'a endorsé à un an de date; lequel billet, signé et paraphé ne varietur par le notaire soussigné, pour l'identifier avec les présentes, a éte remis au dit sieur Benjamin Hart en sa dite qualité, qui le reconnait en sur fait charge. Il est expressement convenu entre les parties aux presentes, que dans le cas en ce billet ne serait pas exactement payé lors de son exigibilité, il portera intérêt à raison de dix pour cent. par an du jour de son echeance jusqu'à parfait paiement, sans que par cette clause le dit sieur Daniel T. Walden soit autorisé à en retarder le paiement, cette faculté lui étant au contraire formellement interdite. Et pour assurer et guarantir tout le paiement du sus dit billet, qui le paiement de tous intérêts eventuels ci-dessus stipulés, le dit sieur Daniel T. Walden affecte, oblige, et hypothèque, specialment et par privilege, en favor du dit sieur Nathan Hart, ce accepté par le dit sieur Benjamin Hart, ici présent en sa dite qualité, pour le sieur N. Hart, et pour tout porteur au sus dit billet, deux lots de terre fesant partie de la batture en face du faubourg S'te Marie de cette ville, designés par les No's un et deux sur un plan de la dite batture, dressé par Joseph Pilie, alors voyer de cette ville, en date du vingt-neuf Novembre, mil huit cent-vingt, et deposé en l'étude de Hugues Lavergne, (aujourd'hui de Wm. Christy,) alors notaire en cette ville, les dits deux lots de terre attenant l'un à l'autre mesurant chacun vingt-neuf pieds deux pouces face à la rue de la Nouvelle Levée, et courant en profondeur entre lignes paralleles jusqu'aux No's trois et quatre du susdit plan, appartenant à James Jackson, ses heritiers ou ayans cause, bornés du côté d'en haut par propriété de Alexander Labranche, ou ayans cause, et du côté d'en bas par la propriété maintenant ou autre fois appartenant à la succession de Benjamin Morgan, ensemble, les deux magazins en briques, et à deux étages construits sur les dits deux lots de terre, et toutes les autres batisses, et constructions en dependant, sans aucune exception ni reserve.

Ces deux lots de terre figures en un seul lot sur un autre plan aussi dressé par Joseph Pilie, en date de dix-huit Janvier, 1827, annexé à un acte devant Hugh R. Gordon, alors notaire en cette ville, en date du 30 Mai, 1827, appartenant au dit sieur Daniel T. Walden au moyen de l'acquisition qu'il en a faite de Mr. Charles Byrne, mandataire de Washington Jackson, suivant acte de vente passé devant Hugh R.

Gordon, alors notaire en cette ville, en date du vingt-six Août, mil huit cent vingt-huit.

Et comme garantir additionelle le dit sieur Dan'l Walden declare qu'il vent et entend que le présent acte importe confession de jugement et execution parce: Le dit sieur Daniel T. Walden declare que les batisses qui se trouvent sur les deux lots de terre sus decrits sont assurées contre les risques du feu à la compagnie de l'Etat de la Louisiane, en cette ville, et s'oblige d'en transferrer regulairement la policé au dit sieur Nathan Hart, ou son procureur fondé, et l'autorise à l'expiration de la dite policé, et dans le cas ou lui dit sieur Daniel T. Walden negligerait de la renouveller à la faire, aux frais de lui dit sieur Daniel T. Walden.

Suivant un certificat du conservateur des hypothèques en cette ville, en date de ce jour, et ci-annexé, il appert qu'il n'y a point à hypothèque enregistre contre *contre* le dit sieur Daniel T. Walden, sur les propriétés présentement hypothèqués.

Dont acte, fait et passé en l'étude à la Nouvelle Orléans, le jour, le mois, et l'an sus dits, en présence de Mess'rs Edouard Lavigne et Rosémond de Armas, témoins competens, qui ont signé avec les comparans et le notaire, après lecture faite.

(Signé) D. T. WALDEN,
B. HART.
ROSEMOND DE ARMAS,
E. LAVIGNE,
AMEDÉE DUCATEL,
Not. Pub.

Pour copie conforme.

[SEAL.] (Signé) AMEDÉE DUCATEL,
Not. Pub.

Le soussigné, conservateur des hypothèques pour la ville et paroisse de la Nouvelle Orléans, certifie que l'hypothèque contenue dans le présent acte a été enregistre en son bureau le deux Mai, 1838, sur le livre No. 39, folio 74, des hypothèques conventionelless.

Nouvelle Orléans, le 28 Avril, 1842.

(Signed) P. LANDREAUX,
Rec'r.

And further, on the 24th day of July, 1843, a certain document, marked C, was filed in the clerk's office; which document is in the words and figures following, to wit:

STATE OF LOUISIANA, *city of New Orleans.*

Before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn, this day personally appeared Isaac Trimble Preston, of this city, who declared that, for and in consideration of the terms and conditions hereinafter mentioned, he does, by these presents, grant, bargain, transfer, sell, convey, and de-

liver, unto Daniel Treadwell Walden, of this city, present and accepting, and who hereby acknowledges possession thereof, the undivided half of the following described property, to wit:

First. The one undivided half of a certain lot of ground, number one, situate in faubourg St. Mary, between St. Joseph and Julia streets, measuring about twenty-three feet two inches front on New Levee street, by one hundred and twenty-three feet eight and one-third inches deep on the dividing line of lot number two, and one hundred and twenty-two feet nine and three-fourth inches deep on the line next Julia street, and about twenty-one feet eight inches on the rear dividing line of lot number six, all English measure, together with all the buildings, rights, ways, and privileges thereunto belonging.

Second. The one undivided half of another certain lot of ground, number two, between St. Joseph and Julia streets, and adjoining lot number one, situate in the faubourg St. Mary, measuring eighteen feet ten inches front on New Levee street, by one hundred and twenty-four feet seven inches deep on the dividing line of lot number three, and one hundred and twenty-three feet eight and one-third inches deep on the dividing line of lot number one, and about twenty-one feet eight inches in the rear of the dividing line of lot number five, all English measure, together with all the buildings, rights, ways, and privileges thereunto belonging.

Third. The one undivided half of another certain lot of ground, number three, between St. Joseph and Julia streets, and adjoining lot number two, situate in faubourg St. Mary, measuring about twenty-three feet five inches front on New Levee street, by one hundred and twenty-five feet six inches on the line next to St. Joseph street, and *and* one hundred and twenty-four feet seven inches on the dividing line of lot number two, and about twenty-one feet eight inches in the rear of the dividing line of lot number four, all English measure, together with all the buildings, rights, ways, and privileges thereunto belonging.

The whole per plan made by Charles F. Zimpel, deputy surveyor of the United States, dated the eighth day of February, eighteen hundred and thirty-five, and annexed to an act in this office, dated the twelfth day of May of the same year.

The said property is a subdivision of three certain lots of ground, situate on the batture, in the faubourg St. Mary, between St. Joseph and Julia streets, each marked by the letters Q, R, and Maxil, adjoining each other; as will be more fully seen by a plan annexed to *annexed to* an act in this office, dated the sixth day of May, eighteen hundred and thirty-four.

These said three lots of ground were acquired by purchase, of the testamentary executors of the late Nathaniel Emerson, per act in this office, dated the twelfth day of May, eighteen hundred and thirty-five; and the said late Nathaniel Emerson acquired the same of J. Cockayne, Luke Jones, Robins and Ezekiel Hays, and others, per act in this office, dated the sixth day of May, eighteen hundred and thirty-four; and Cockayne, Watts & Co., Ezekiel Hays, and Newton Willey, acquired

the same by purchase from John Rose, per act passed before William Christy, notary public, dated the twenty-first day of February, eighteen hundred and thirty-two; and the said Newton Willey sold his undivided third interest in and to the same to Ezekiel Hays, per act in this office, dated the tenth day of March, eighteen hundred and thirty-two, and upon which said interest Madam Willey renounced, per act in this office, dated the ninth day of June of the same year; and the said John Rose acquired the whole of the herein described property by purchase of Pierre Malochée, per act passed before William Christy, notary public, dated the tenth day of February, eighteen hundred and twenty-nine, and upon which said property Madam Malochée renounced; and the said Pierre Malochée acquired lots numbers Q and R by purchase of the heirs of Bertrand Gravier, per act passed before Hughes Lavergne, late notary public, dated the fourteenth day of January, eighteen hundred and twenty-five; and the lot number Maxil was acquired by purchase, by the said P. Malochée of Maximillian Henry, per act passed before the said notary Lavergne, dated the twenty-third day of March, eighteen hundred and twenty-five; and the said Maximillian Henry acquired said lot by partition with the heirs of B. Gravier, per act passed before the said notary Lavergne, dated the twenty-third day of March, 1825; and the said Maximillian Henry acquired said lot by partition with the heirs of B. Gravier, per act passed before the said notary Lavergne, on the fourteenth day of March, 1823; and the heirs of Gravier acquired the lots numbers Q and R by the same act.

And upon which said property, agreeably to a certificate of the recorder of mortgages of this city, dated the twenty-eighth day of May, eighteen hundred and thirty-five, there appears to exist a special mortgage in favor of the testamentary executors of the said Nathaniel Emerson, to [the] amount of thirty-three thousand nine hundred dollars; the payment of one-half of which said amount the said Daniel T. Walden hereby assumes as hereinafter mentioned.

This sale is made for and in consideration of the sum of seventeen thousand and one dollars and thirty-seven cents; payable fifty-one dollars and thirty-seven cents in cash, and the balance by the assumption aforesaid, to [the] amount of sixteen thousand nine hundred and fifty dollars, as follows:

First. In cash, at the signing these presents, the sum of fifty-one dollars and thirty-seven cents, being the one-half of the brokerage paid for purchasing said property, and the one-half of the cost of the conveyance - $51 37

Second. The said Daniel T. Walden assumes and promises to pay the one-half of a certain promissory note drawn by the said Isaac T. Preston, dated the thirtieth day of April, eighteen hundred and thirty-five, to the order of, and endorsed by, the said D. T. Walden and Robert Layton, at one year after date, for eleven thousand three hundred dollars, which said half is five thousand six hundred and fifty dollars - - 5,650 00

Third. The said Daniel T. Walden assumes and prom-

ises to pay the one-half of another certain promissory note, drawn by the said Isaac T. Preston, dated the thirtieth day of April, eighteen hundred and thirty-five, to the order of, and endorsed by, the said Daniel T. Walden, at two years after date, for eleven thousand three hundred dollars, which said half is five thousand six hundred and fifty dollars - - - 5,650 00

Fourth. The said Daniel T. Walden assumes and promises to pay the one-half of another certain promissory note, drawn by the said Isaac T. Preston, dated the thirtieth day of April, eighteen hundred and thirty-five, to the order of, and endorsed by, the said D. T. Walden, at three years after date, for eleven thousand three hundred dollars, which said half is five thousand six hundred and fifty dollars - - - 5,650 00

$17,001 37

Making the sum aforesaid of seventeen thousand [and] one dollars and thirty cents; which said cash payment the said vendor hereby acknowledges to have received.

And it is agreed between the parties aforesaid, that in case the two last mentioned notes should not be paid when due, that they shall bear an interest after non-payment at the rate of ten per centum per annum.

And to secure the payment of the assumption of the half of the three notes herein described, to amount of sixteen thousand nine hundred and fifty dollars, with interest and costs thereon, the said purchaser hereby mortgages and specially hypothecates the herein described property, promising and binding himself not to alienate or encumber the same to the prejudice of this act.

And to this act intervened and appeared Madam Catharine Lawn Layton, the wife of the said Isaac Trimble Preston, and duly authorized in the premises by her said husband, who declared that it is her intention to renounce all her liens of privilege and mortgage upon the property herein sold:

First. For the restitution of her dower, and for replacing dotal effects brought at the time of her marriage, and which have been alienated by her said husband.

Second. For the restitution of dotal effects acquired during marriage, by inheritance or otherwise.

Third. For the restitution of such of her paraphernal property and funds as are or shall be alienated by her said husband or by herself, the price of which her husband has received, or has otherwise disposed of for his individual interest, or of which he has had the administration, or otherwise been benefitted.

And I, the said notary, did carefully explain to the said Madame Preston the several articles contained in the new civil code of this State, to wit, the first and second numbers of articles 2355 and 2367 and

3286, and the first and second numbers of articles 3287; also, the seventh number of article 3158, and the article 3182, as well as others that may be in force in this State, informing her of the nature and extent of the advantages thus secured to her by law; and that, by making her renunciation, she would deprive herself of all rights of reclamation on the property sold as aforesaid, and the nature of her rights, and the contract which she is now agreeing to; and this was done apart and out of the hearing of her said husband.

And upon which the said Madame Preston declared that she consents to said sale, thereby abandoning all rights of mortgage, or otherwise, which she has or might have upon the property aforesaid; and renouncing, now and forever, her said rights and liens, whether the same be secured to her by the above recited articles, or any other articles of the new civil *civil* code, or by the old civil code of this State, or by any Spanish laws that are now in force in cases not provided for in the new civil code, and finally by any laws of this State that have been enacted subsequently to the promulgation of the new civil code, and ceding, transferring, and conveying the same to the said purchaser, his heirs and assigns, forever; hereby binding herself, her heirs and assigns, to hold valid the aforesaid *the aforesaid* sale, and this her said renunciation, her said husband being now present and authorizing her in the premises.

To have and to hold the one undivided half of the aforesaid property unto the said purchaser, to his proper use and behoof forever; and the said vendor, for himself, his heirs, and assigns, against all and every person and persons claiming by, through, or under him, only unto the said purchaser, his heirs and assigns, the one undivided half of the herein described property shall and will forever warrant and defend by these presents; hereby subrogating and transferring to said purchaser, his heirs and assigns, all his rights of warranty and actions against his vendor and all preceding vendors.

Done and passed at New Orleans, this twenty-eighth day of May, eighteen hundred and thirty-five, in presence of Charles L. Durocher and William T. Lewis, both of this city, witnesses, who have hereunto signed their names with said parties and me, the said notary. Before signing this act, the parties declared that they were jointly and equally interested in the purchase of the three lots of ground herein described, from the executors of Nathaniel Emerson, although the same was adjudicated to Isaac T. Preston individually at the public sale made by the auctioneer; and this act is made for the purpose only of conveying to the said D. T. Walden his undivided half, neither of the aforesaid parties warranting each other, excepting against their own acts and the acts of their heirs.

(Signed) D. T. WALDEN,
ISAAC T. PRESTON,
CATHERINE LAWN PRESTON,
CHARLES L. DUROCHER,

WILLIAM T. LEWIS,
W. Y. LEWIS, *Not. Pub.*

A true copy of the original. New Orleans, 28th February, 1843.
(Signed) W. Y. LEWIS, [SEAL.]
Notary Public.

And further, on the 24th day of May, 1843, a certain document, marked "B," was filed in the clerk's office, which is in the words and figures following, to wit:

STATE OF LOUISIANA, *city of New Orleans.*

Before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn, this day personally appeared Isaac Trimble Preston and Daniel Treadwell Walden, both of this city, who severally declared that they are joint owners in common of the following described property, to wit:

First. A certain lot of ground, number one, situate in faubourg St. Mary, between St. Joseph and Julia streets, measuring about twenty-three feet two inches front on New Levee street, by one hundred and twenty-three feet eight and one-third inches deep on the dividing line of lot number two, and one hundred and twenty-two feet nine and three-fourths inches deep on the line next Julia street, and about twenty-one feet eight inches on the rear dividing line of lot number six, all English measure, together with all the buildings, rights, ways, and privileges, thereunto belonging.

Second. One other certain lot of ground, number three, situate in same faubourg, between St. Joseph and Julia streets, measuring about twenty-three feet five inches front on New Levee street, by one hundred and twenty-five feet six inches deep on the line next to St. Joseph street, and one hundred and twenty-four feet seven inches on the dividing line of lot No. 2, and about twenty-one feet eight inches in the rear of the dividing line of lot number 4, all English measure, together with all the buildings, rights, ways, and privileges, thereunto belonging.

The whole per plan made by Charles F. Zimpel, deputy surveyor of the United States, dated the eighth day of February, eighteen hundred and thirty-five, and annexed to an act in this office dated the twelfth day of May of the same year.

These said lots, with lot number two, are subdivisions of three certain lots of ground situate on the batture, in the faubourg St. Mary, between St. Joseph and Julia streets, each marked by the letters Q, R, and Maxil, adjoining each other, as will be more fully seen by a plan annexed to an act in this office, dated the sixth day of May, eighteen hundred and thirty-four.

The said property was acquired by purchase by said Isaac T. Preston, of the succession of the late Nathaniel Emerson, per act in this office, dated the twelfth day of May, eighteen hundred and thirty-

five; and the said Preston sold the undivided half of the aforesaid property to the said Daniel T. Walden, per act in this office, dated the twenty-eighth day of May of the same year.

And the said parties having agreed to make a partition of their interest in and to the aforesaid lots of grounds, whereby each party shall possess one entire lot in his individual right, and that a transfer thereof be made on these terms and conditions forthwith.

Therefore, be it known, that the said Isaac Trimble Preston, in conformity with the foregoing agreement, and for and in consideration of the sum of seven hundred and fifty dollars, payable in the promissory note of said Daniel T. Walden, dated the nineteenth day of March, eighteen hundred and thirty-eight, to the order of the Ocean Insurance company, payable at sixty days after date for that said amount, being the difference in value between the said half lots numbers one and three, and which said note the said Preston hereby acknowledges to have received, doth by these presents cede, transfer, and make over in exchange, to the said Daniel T. Walden, present and accepting, his undivided half interest in and to the aforesaid lot number three, and house number one hundred and ten, situate in the faubourg St. Mary, between St. Joseph and Julia streets, measuring about twenty-three feet five inches front on New Levee street, by one hundred and twenty-five feet six inches deep on the line next to St. Joseph street, and one hundred and twenty-four feet seven inches deep on the dividing line of lot number two, and about twenty-one feet eight inches in the rear of the dividing line of lot number four, all English measure, together with all the buildings, rights, ways, and privileges thereunto belonging; the undivided half of which said lot is estimated between the parties at six thousand four hundred dollars.

And in consideration of the exchange and difference in value herein made of the aforesaid undivided half of the lot number three, the said Daniel Treadwell Walden doth, by these presents, cede, transfer, and make over, on his part in exchange unto the said Isaac Trimble, present and accepting, his undivided half interest in and to a certain lot of ground, number one, and the house number one hundred and eight, situate in the faubourg St. Mary, between St. Joseph and Julia streets, measuring about twenty feet two inches front on New Levee street, by one hundred and twenty-three feet eight and one-third inches deep on the dividing line of lot number *of lot number* two, and one hundred and twenty-two feet nine and three-fourths inches deep on the line next Julia street, and about twenty-one feet eight inches in the rear dividing line of lot number six, all English measure, together with all the buildings, rights, ways, and privileges thereunto belonging; the undivided half of which said lot is estimated between the parties at five thousand six hundred and fifty dollars.

And upon which said lots of ground, numbers one and three, agreeably to a certificate of the recorder of mortgages of this city, dated the twenty-first day of March, eighteen hundred and thirty-eight, and annexed to an act in this office of equal date herewith, there exists a spe-

cial mortgage granted by said Isaac T. Preston in favor of the succession of the late Samuel Emerson, per act in this office, dated the twelfth day of May, eighteen hundred and thirty-five, to secure the sum of twenty-two thousand six hundred dollars; and also an assumption by said Daniel T. Walden, per act in this office, dated the twenty-eighth day of May, eighteen hundred and thirty-five, to amount of eleven thousand three hundred dollars, and which said encumbrances the parties to this act oblige themselves to remove forthwith.

And the said parties to this act hereby acknowledge themselves content with this exchange, and release each other from any reclamation thereon more than as stated. And to this act intervened and appeared Madame Catharine Lawn Layton, of lawful age, wife of the said Isaac Trimble Preston, and duly authorized by him, who declared it is her intention to renounce her rights of lien and mortgage on the property herein described:

First. For the restitution of her dowry and for placing dotal effects brought at the time of her marriage, and which have been alienated by her said husband.

Second. For the restitution of dotal effects acquired during marriage, *but* inheritance or otherwise.

Third. For the restitution of such of her paraphernal property and funds as are or shall be alienated by her said husband, or by herself, the price of which her husband has received or otherwise disposed of for his individual interest, or of which he has had the administration, or been otherwise benefitted.

And I, the said notary, did carefully explain to the said Madame Preston the several articles contained in the new civil code, as well as all others that may be in force in this State touching the nature and extent of the advantages secured to her by law, and informed her that by making her renunciation she would deprive herself of all reclamation on the property aforesaid; and all this was done out of the presence of her said husband.

That, notwithstanding this information, she consented to said sale, thereby abandoning all her rights of mortgage or otherwise upon the property aforesaid, and renouncing now and forever her said rights and liens, hereby ceding, transferring, and conveying the same to the said Daniel T. Walden, his heirs and assigns forever, and binding herself, her heirs and assigns, to hold valid the said act of renunciation, her husband being now present and authorizing her in the premises.

Done and passed at New Orleans, this twenty-third day of March, eighteen hundred and thirty-eight, in presence of William T. Lewis and Gustavus Harper, both of this city, witnesses, who have hereunto signed their names with said parties and me, the said notary.

(Signed) ISAAC T. PRESTON,
CATHARINE LAWN PRESTON,
D. T. WALDEN,
WILLIAM T. LEWIS,
GUSTAVUS HARPER,
W. Y. LEWIS, *Notary public.*

I hereby certify the foregoing [is] a copy of the original upon my current records. In faith whereof I hereunto set my hand and seal at New Orleans, this 27th February, 1843.

(Signed) W. Y. LEWIS, [SEAL.]
Notary public.

And on 10th day of June, 1843, the following return of the service of the marshal of the copy of the petition, and of the documents annexed to said petition, was filed in the clerk's office, to wit:

Received 10th June, 1843, and on the same day I served a copy of the within petition and documents annexed on William Christy, esq., in person; returned 10th June, 1843.

(Signed,) A. SIDNEY ROBERTSON,
U. S. marshal,
By GEO. W. GAVIN,
Deputy U. S. M.

And on the 27th day of April, 1844, the following answer of the assignee was filed in the clerk's office, to wit:

WILLIAM CHRISTY, assignee of Daniel T. Walden, } advs. NATHAN HART. }

United States circuit court, eastern district of Louisiana. In bankruptcy.

The answer of William Christy, assignee of Daniel T. Walden, bankrupt, to the petition of Nathan Hart, specially denies that said Walden ever executed, or ever intended to execute, a mortgage in favor of petitioner on a certain lot of ground, designated as No. 3, on a plan drawn by , situate between St. Joseph and Julia streets, measuring about 23 feet 5 inches front on New Levee street, by 125 feet 6 inches deep on the line next St. Joseph street, and 124 feet 7 inches on the dividing line of lot number 2, and about 21 feet 8 inches in the rear of the dividing line of lot No. 4, English measure, &c., which said property was surrendered by said bankrupt for the benefit of his creditors, free from any special encumbrances.

Defendant and respondent further denies all and singular the allegations in plaintiff's petition contained, and prays hence to be dismissed with costs; and, as in duty bound, &c.

GEO. W. CHRISTY,
For assignee.

And on the 29th day of May, 1844, the following notice was entered on the minutes, to wit:

May 29th, A. D. 1844. The court met pursuant to adjournment. Present, the honorable Theo. H. McCaleb.

In the bankruptcy of DANIEL T. WALDEN,
Wm. Christy, assignee, Nathan Hart,
vs.
William Christy. } 274.

On motion of the counsel of Nathan Hart, who claims a mortgage on a certain lot, and buildings thereon, now advertised to be sold by the assignee on Wednesday, the 29th of this month, it is ordered that William Christy, esq., the assignee, and the marshal of this court, be ordered and enjoined, and he is hereby ordered and enjoined, not to sell the lot and buildings upon which the mortgage is claimed by the said Nathan Hart in his said petition, until the said petition shall be heard, or until the further order of the court in the premises.

And on the 26th day of November, 1844, the following agreement was filed in the clerk's office; which agreement is in the words and figures following, to wit:

HART
vs.
WALDEN'S assignee.

It is agreed that plaintiff has leave to amend his bill by inserting the figure 3 in the place of 2, in the 8th line from the top of the second page; and also in the fourth interrogatory, so that the sentence shall read "it was agreed between the said Walden and the said Benjamin Hart, &c., that the same should be secured by a mortgage on a lot of ground with the buildings thereon, to be described as a lot of ground designated as number 3, situate between St. Joseph and Julia streets, measuring about (23) twenty-three feet five inches front on New Levee street, by 125.6 ft., one hundred and twenty-five feet six inches deep on the line next St. Joseph street, and one hundred and twenty-four feet seven inches on the dividing line of lot No. 2, and about (21.8 ft.) twenty-one feet eight inches in the rear of the dividing line of lot No. 4, all English measure," &c.; being the description of the said lot No. 3, instead of No. 2.

(Signed,) WM. CHRISTY, *Assignee.*
GEO. STRAWBRIDGE, *for self and*
J. R. GRYMES.

And on the 26th November, 1844, the following entry was made on the minutes, to wit:

Tuesday, November 26th, A. D. 1844. The court met pursuant to adjournment. Present, the honorable Theo. H. McCaleb.

In the bankruptcy of DANIEL T. WALDEN, Hart,
vs.
WILLIAM CHRISTY, assignee. } 274.

Upon motion of George Strawbridge, esq., of counsel for Benjamin Hart, it is ordered that the bill and complaint, as above entitled, be

amended in conformity with the agreement this day filed and presented to the notice of the court.

And on the 5th day of December, 1844, the following evidence was taken in open court, to wit:

Thursday, December 5th, 1844.

Evidence taken in writing upon the trial of this case.

In the bankruptcy of D. T. WALDEN, BENJAMIN HART, } vs. CHRISTY, assignee of D. T. Walden's estate. }

Ducatel, being duly sworn, witness for the plaintiff, states that he is a notary of this city, and, being shown the document A, recognises it as the copy of an act executed before him; Mr. Walden himself desired witness to have the act prepared, who gave him a memorandum in writing upon a loose sheet of paper, which witness cannot now lay his hand on; and Walden referred him to William Y. Lewis's office to examine the papers concerning the titles. He examined the act at said notary's office, by which Mr. Walden acquired the title to that property; being shown the document, marked B witness recognises it as the copy of one of the acts examined by him in Lewis's notarial office; witness did not examine the plan at Lewis's office, but examined the plan handed to him by Walden; witness states that the act, as prepared by him, was read over to Mr. Walden before the same was signed, and he does not know how a mistake originated, whether with himself or Mr. Walden; witness had no instructions from Mr. Walden, nor no intimation from him that he was to prepare a mortgage upon a lot owned by any other person than Mr. Walden. Had witness had the slightest suspicion or idea of such a thing, that he never would have passed the act; witness does not recollect whether, in the written instructions given him by Walden, any number was mentioned. Since being informed of the error, he has looked for the memorandum, but has not been able to find it. Witness states that in this memoranda the dates of the acts in Lewis's office, relative to Walden's title, formed the principal part; witness, for the designation and description of the property, *he* was left pretty much to his own researches among the acts referred to; witness thinks that, in the plans and acts which he inspected, *he thinks* there was considerable confusion, and that the error arose from that circumstance; he does not know of any other circumstance which could have led to that error, and he certainly would not have passed the act had he had the smallest doubt of Walden being the proprietor.

Admitted by the respective counsel.

That there are 19 judgments recorded against the bankrupt Walden, since the 28th day of December, 1839, sufficient to swallow up the whole value of lot No. 3, now in contestation, and that Walden never made, previous to his bankruptcy after the date of his mortgage to the

petitioner Hart, any other conventional mortgage upon the said lot No. 3, or encumbered it by any conventional act up to the time of his bankruptcy, nor was there any other conventional mortgage existing at the time of the execution of the mortgage to Hart.

And further, on the 5th day of December, 1844, the following entry was made on the minutes, to wit:

Thursday, December 5th, A. D. 1844. The court met pursuant to adjournment. Present, the hon. Theo. H. McCaleb.

In the bankruptcy of—

DANIEL T. WALDEN
Nathan Hart
vs.
WM. CHRISTY, assignee. } Petition in chancery. 274.

This cause came on this day for hearing, on the petition of Nathan Hart, a mortgage creditor, and was argued by counsel; whereupon, the court having considered the evidence, and exhibits, and the arguments of counsel thereon, it is ordered, adjudged, and decreed, that the mortgage of the petitioner, Nathan Hart, executed before A. Ducatel, a notary public, on the 22d day of May, 1838, by the bankrupt, D. T. Walden, for the sum of $8,665, be considered as a mortgage on the lot number 3, laid down on the plan in evidence in this case, and which is the copy of the plan referred to in the titles or deeds passed between the said Walden and Isaac T. Preston, as of record in the office of William Y. Lewis, notary public, containing 23 feet 5 inches front upon New Levee street, between Julia and St. Joseph streets, by 125 feet 6 inches deep on the line next to St. Joseph street, and 124 feet 7 inches on the line of lot number 2, and now designated as the house or store No. 110, in said New Levee street, in the city of New Orleans; and that the said lot, and the buildings thereon, do stand as a mortgage security from the date of the said act of mortgage, to the said petitioner, for his debt amounting to $8,656 *dollars*, with all interest due thereon.

And it is further ordered, adjudged, and decreed, that the assignee do proceed to advertise and sell the said lot and buildings, and apply the proceeds thereof to the payment of the said petitioner's debt and interest aforesaid, and that the costs of this petition be paid by the bankrupt's estate.

December 5th, 1844.

And on the 5th day of December, 1844, the following judgment was signed by the judge and filed in the clerk's office, to wit:

In the matter of Daniel T. Walden, a bankrupt, in bankruptcy.

On the petition of Nathan Hart.

This cause came on this day for hearing, on the petition of Nathan Hart, a mortgage creditor, and was argued by counsel; whereupon, the court, having considered the evidence, and exhibits, and the arguments

of counsel thereon, it is ordered, adjudged, and decreed, that the mortgage of the petitioner, Nathan Hart, executed before A. Ducatel, a notary public, on the 22d day of May, 1838, by the bankrupt, D. T. Walden, for the sum of $8,665, be considered as a mortgage on the lot No. 3, laid down on the plan in evidence in this case, and which is the copy of the plan referred to in the titles or deeds passed between the said Walden and Isaac T. Preston, as of record in the office of William Y. Lewis, notary public, containing 23 feet 5 inches front on New Levee street, between Julia and St. Joseph streets, by 125 feet 6 inches deep on the line next to St. Joseph street, and 124 feet 7 inches on the line of lot No. 2, and now designated as the house or store No. 110 in said New Levee street, in the city of New Orleans; and that the said lot and the buildings thereon do stand as a mortgage security, from the date of the said act of mortgage to the said petitioner, for his debt, amounting to $8,655 *dollars*, with all interest due thereon. And it is further ordered, adjudged, and decreed, that the assignee do proceed to advertise and sell the said lot and buildings, and apply the proceeds thereof to the payment of the said petitioner's debt and interest aforesaid; and that the costs of this petition be paid by the bankrupt's estate.

December 5th, 1844.

(Signed) THEO. H. McCALEB,
United States' judge.

Clerk's office, United States district court, for the district of Louisiana.

I, Needler R. Jennings, clerk of the court aforesaid, do hereby certify, that the foregoing forty-seven pages form a true and complete transcript of all the proceedings on file and of record in the matter of Nathan Hart vs. Wm. Christy, assignee of the estate of Daniel T. Walden, number two hundred and seventy-four of the docket of the said court, in bankruptcy.

In testimony whereof I have hereunto signed my name and affixed the seal of the *seal of the* said court, at New Orleans, this fifteenth [SEAL.] day of February, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-second year of the American independence.

N. R. JENNINGS, *Clerk*,
By BOISBLANC, *Deputy clerk.*

Extracts from report of board of commissioners and decree of holomogation, July—Nov., 1838, certified from district court August 29th, 1850, and filed herein September 11th, 1850.

UNITED STATES DISTRICT COURT,
Eastern district of Louisiana.

Extracts from the report of the board of commissioners in the estate of Daniel T. Walden, bankrupt, filed July 28th, 1848.

From folio 27–'8, item in the report of William Christy, assignee,

filed 24th February, 1848, which report is embodied in said board's report as follows:

Sales of 16th June, 1845.

For lot No. 110, new levee, specially mortgaged to Nathan Hart, and bought by him (see decree of court confirming this mortgage) - - - - - - $4,700 00

From folios 29–33 in same report so embodied, he (the assignee) paid the following items:

By this amount, being the proceeds of lot No. 110, new levee, specially mortgaged to Nathan Hart, purchased by him, and to be credited on his mortgage as per decree of the United States district court - - - 4,700 00

Folio 51.—Third.

The amount of outstanding claims and debts due and owing by said bankrupt, as appears from his schedule "A" and supplemental schedule "C," which have not been proved by the creditors, is as follows:

Names of creditors.	Residence.	Nature of debt and remarks. Under such heading on folio 54.	Amount.
Joseph Fowler,	N. Orleans,	Wm. Christy's note held by J. Fowler,	$3,530 22

Report signed.

M. M. COHEN.
LS. DUVIGNEAUD,
For F. F. PEPIN,
WM. JO. VASON,
Board of Commissioners in bankruptcy.

Decree of Homologation.

Friday, November 3d, 1848. Present, Hon. Theo. H. McCaleb.

In the bankruptcy of Daniel T. Walden. No. 274.

Report of commissioners.

This being the day fixed for the hearing of the commissioner's report herein, the same was, at the hour of 10, a. m., called for hearing:

Whereupon, it being shown to the court that, according to the order of the 12th ultimo, due notice has been published in the "Picayune" and "Courier," two newspapers printed in this city, that the creditors who have proved their debts, and are named in said report, have respectively been notified through the post office; and that the rules of court have been fully complied with; and it being shown further that no opposition to the homologation of said report has been filed of record, and there appearing now no good reason why the same should not be homologated and approved:

It is ordered by the court that the said report be homologated and approved, and that the funds be distributed in conformity thereto.

THEO. H. McCALEB,
U. S. Judge.

EASTERN DISTRICT OF LOUISIANA,
U. S. district court, clerk's office, New Orleans.

I hereby certify the two foregoing folios to contain—the former, true and correct extracts from the original report of the board of commissioners on the estate of Daniel T. Walden, bankrupt, filed on the 28th July, 1848; and the latter, a true, faithful, and correct copy of the original decree of homologation of said report appearing at the close thereof, and signed as by me, known by his honor the judge of said court; said report now being on file in said office as part of the record of the bankruptcy of Daniel T. Walden, No. 274 of the docket.

In faith whereof I do hereunto set my hand, and affix the seal of said court, at New Orleans, this twenty-ninth day of August, [SEAL.] A. D. 1850, and 75th year of American independence.

N. R. JENNINGS, *Clerk.*
By ROBT. M. LUSHER,
D'y clerk, U. S. dist. court.

Petition of assignee, and rule on mortgage creditors, April, May, 1845, certified from clerk's office of U. S. district court, August 29th, 1850, and filed herein, September 11th, 1850.

UNITED STATES DISTRICT COURT,
Eastern district of Louisiana.

Bankruptcy of D. T. Walden. No. 274.

1st. Petition of assignee for sale of property, filed 24th April, 1845.
2d. Rule on mortgage creditors, and marshal's return

United States district court, eastern district of Louisiana. Sitting in bankruptcy.

The petition of William Christy, duly appointed and confirmed, assignee of Daniel T. Walden, bankrupt, respectfully shows, that there is still in his possession, as assignee aforesaid, the following described property, specially mortgaged to Nathan Hart to secure the payment of the sum of $8,655, with interest, which he prays may be sold on the following terms and conditions, to wit:

Description of property.

A certain lot of ground, situate in the Second Municipality of this city, in the square bounded by New Levee street, St. Joseph, Commerce and Julia streets, and measuring 23 feet 5 inches front, on New Levee street, by about 125 feet 6 inches in depth on the side nearest to St. Joseph street, and 124 feet 7 inches in depth on the side nearest Julia

street, and about 21 feet 8 inches on the rear line; together with the three-story house, No. 10, New Levee; and other buildings and improvements erected on said lot.

Terms of sale.

One-third cash, and the balance on a credit of 12 and 18 months, for notes of purchaser, without endorsement, but secured by mortgage on the property sold.

Petitioner further represents that he is also in the possession of the following described property, belonging to the estate of bankrupt, which is not, however, subject to any special mortgages, but which he prays may also be sold on the following terms and conditions, to wit:

Description of property.

A square of ground, situate in faubourg Lafayette, designated by the number 28 on a plan drawn by Louis Bringier, surveyor general, on the 7th January, 1831, and annexed to an act passed before W. Y. Lewis, notary, on the 16th February, 1832; which said square measures 270 feet front on Jackson street, 329 feet 8 inches and 2 lines front on Sales street, 306 feet 9 inches front on Maunsel street, and 320 feet 5 inches and 2 lines on the division line of faubourg Livaudais. Terms of sale, cash. And as in duty bound, petitioner, &c.

(Signed) GEO. W. CHRISTY,
For petitioner.

Service accepted. I have no objections to the sale of the property specially mortgaged to me, and described in the above petition, on the terms and conditions within specified.

(Signed) NATHAN HART.

U. S. district court, for the district of Louisiana.

On this twenty-fourth day of April, A. D. 1845, upon reading the petition aforesaid, it is ordered by the court, that due notice thereof be published in two newspapers printed in this district, ten days at least before the time assigned for the hearing; that a hearing of the said petition will be had on the 23d day of May next, at ten o'clock, a. m., when and where all creditors, the bankrupt, and other persons in interest, may appear, and shew cause, if any they have, why the prayer of the said petition should not be granted.

Rule on mortgage creditors.

In the bankruptcy of Daniel T. Walden. Petition of Wm. Christy, assignee, to sell the property, and to erase and cancel the mortgages thereon.

In bankruptcy. May 10th, 1845. United States district court, eastern district of Louisiana.

Present, the hon. Theo. H. McCaleb.

The assignee of the said estate having filed in this court a petition as above described; it is ordered by the court, that a hearing of the said petition be had on Friday, the 23d day of May next, at 10 o'clock, a. m., when, as one of the mortgage creditors of said estate, you are notified to appear and shew cause why the property as described below should not be sold upon the terms and in the manner and form set forth in said petition, and why the said assignee should not be authorized to erase and cancel the mortgages, judgments, and liens recorded against said bankrupt, and in favor of certain creditors of the estate, affecting the property surrendered, so that said assignee may convey a clear and unencumbered title to any purchaser thereof, reserving to such creditors all their rights in law to the proceeds of the sale of the said property upon the final distribution thereof.

Copy teste. (Signed,) N. R. JENNINGS, *Clerk.*

1o. Property in the Second Municipality, bounded by New Levee, Commerce, St. Joseph, and Julia streets, with the improvements thereon, mortgaged to Nathan Hart. Terms, one-third cash; the balance on a credit of 12 and 18 months.

2o. A square of ground situate in Lafayette, bounded by Jackson, Solis, and Maunsel streets; the division line of faubourg Livaudais. Terms, cash; all of which is more specially described in assignee's petition filed in court.

To 1. Joseph Fowler.
" 2. Delphine Emilie Macarty.
" 3. President, Directors & Co., of the Bank of the United States.
" 4. Eldridge Packer.
" 5. Merchants' Bank of New Orleans.
" 6. Mayor, Alderman et als.
" 7. Maunsel White.
" 8. Peters & Millard.
" 9. J. H. Leverech & Co.
" 10. Jasper Strong.
" 11. J. L. Florence.
" 12. New Orleans Canal and Banking Company.
" 13. Gas Light and Banking Company.

Marshal's return.

Received May 12th, 1845, and on the same day served copy of the within rule on the within named Joseph Fowler by handing him a copy in New Orleans.

A. SIDNEY ROBERTSON, *U. S. marshal,*
(Signed) By J. H. RINEHART, *Deputy.*

Received May 12th, 1845, and on the same day served copy of the within rule on the within named Gas Light and Banking Company by handing copy to E. W. Gregory, cashier, at the banking house, New Orleans.

A. SIDNEY ROBERTSON, *U. S. marshal,*
(Signed) By J. H. RINEHART, *Deputy.*

4021.

Received May 12th, 1845, and on the same day served copy of the within rule on the within named Canal and Banking Company by handing copy to N. N. Wilkinson, cashier of the banking house in New Orleans.

A. SIDNEY ROBERTSON, *U. S. marshal*,
By J. H. RINEHART, *Deputy*.

Received May 12th, 1845, and on the same day served copy of the within rule on *on* the within named Maunsel White by leaving a copy at his office, in the hands of Cuthbert Bullitt, esq.

A. SIDNEY ROBERTSON, *U. S. marshal*,
(Signed) By J. H. RINEHART, *Deputy*.

Received May 12th, 1845, and on the 13th of the same month served copy of the within rule on the within named Merchants' Bank of New Orleans, by handing a copy to Peter Conrey, one of the commissioners of the bank in New Orleans.

A. SIDNEY ROBERTSON,
U. S. marshal.
(Signed) By J. H. RINEHART, *D'y*.

Received May 12th, 1845, and on the same day served copy of the within rule on the within named James H. Leverich & Co., by leaving copy at No. 10 Old levee, in the hands of Charles H. Lee, in New Orleans.

A. SIDNEY ROBERTSON,
U. S. marshal.
(Signed) By J. H. RINEHART, *D'y*.

Received, New Orleans, May 12th, 1845, and on the same day served copy of the within rule on the within named Jasper Strong, by leaving copy at Leverich & Co., No. 10 Old levee, in the hands of Charles H. Lee, in New Orleans.

A. SIDNEY ROBERTSON,
U. S. marshal.
(Signed) By J. H. RINEHART, *D'y*.

Received May 12th, 1845, and on the 13th May served copy of the within rule on the within named Mayor and Aldermen et als., by leaving a copy at the mayor's office, in the hands of his clerk.

A. SIDNEY ROBERTSON,
U. S. marshal.
(Signed) By J. H. RINEHART, *D'y*.

Received May 12th, and on the same day served copy of the within rule on the within named Peters & Millard, by handing a copy of the same to Mr. Millard, at his store, in New Orleans.

A. SIDNEY ROBERTSON,
U. S. marshal.
(Signed) By J. H. RINEHART, *D'y*.

Received May 12th, 1845, and on the 13th day of the same month served copy of the within rule on the within named J. L. Florence, by handing a copy of the same to Henry Florence, his agent, in New Orleans.

A. SIDNEY ROBERTSON,
U. S. marshal.

(Signed) By J. H. RINEHART, *D'y.*

Received May 12th, 1845, and on the 19th day of the same month served copy of the within rule on the within named President, Directors and Co. of the Bank of the U. States, by leaving copy for C. Adams, at his counting room, in New Orleans.

A. SIDNEY ROBERTSON,
U. S. marshal.

(Signed) By J. H. RINEHART, *D'y.*

U. S. dist. court, eastern district of Louisiana, clerk's office, New Orleans.

I hereby certify the foregoing to be true and correct copies of the original assignee's petition, order of court, notice to mortgage creditor's and marshal's return of record in said court in the bankruptcy of Daniel T. Walden, No. 274 of the docket.

In faith whereof I hereunto set my hand and affix the seal of said court, at New Orleans, this 29th day of August, A. D. 1850, [SEAL.] and 75th year of American independence.

N. R. JENNINGS, *Clerk,*
By ROBT. M. LUSHER,
D'y clerk U. S. dist. court.

And on the seventh day of May, 1850, final judgment was rendered in this cause; and on the 14th of May, 1850, said final judgment was signed, and is recorded in the judgment docket, as follows, to wit:

New Orleans, Tuesday, 7th May, 1850.

Court met pursuant to adjournment. Present, hon. Theo. H. McCaleb, dist. judge. Absent, hon. John McKinley, presiding judge.

JOSEPH FOWLER, jr., vs. NATHAN HART. } No. 1620.

This cause having been argued and submitted at the December term, 1849, of this court, and the court having maturely considered the same, and being satisfied that the law and the evidence are in favor of the defendant, doth now order, adjudge, and decree, that there be judgment in favor of said defendant, Nathan Hart, and that this cause be dismissed at complainant's costs.

Jndgment rendered 7th May, 1850; signed 14th May, 1850.

THEO. H. McCALEB,
U. S. Judge.

And on the 29th July, 1850, the plaintiff, by his counsel, Benjamin & Micou, esqrs., filed herein the following petition for an appeal in this cause:

To the honorable the fifth circuit court of the United States, in and for the eastern district of Louisiana:

The petition of Joseph Fowler, junr., respectfully shows, that he is aggrieved by the judgment rendered against him in his suit vs. Nathan Hart. Wherefore, he prays that the annexed bond being considered and accepted, an appeal from said judgment be allowed, returnable to the next term of the Supreme Court of the United States, according to law.

BENJAMIN & MICOU, *of counsel.*

And afterwards, on the 29th July, 1850, the following order, granting the appeal prayed for, was made, and entered of record on the minutes as follows, to wit:

JOSEPH FOWLER, jr.,
vs.
NATHAN HART.

AT CHAMBERS, *July* 23, 1850.

On application at chambers of Benjamin & Micou, esqrs., of counsel for plaintiff, and on presenting a petition representing that said plaintiff felt aggrieved by the judgment herein rendered, and praying an appeal, returnable to the next term of the Supreme Court, it is ordered that the prayer of said petition be granted, on the plaintiff giving bond in the sum of five hundred dollars with J. H. Foley, as security conditioned according to law.

(Signed,) THEO. H. McCALEB,
U. S. judge.

Received and recorded, 29th July, 1850.

J. W. GURLEY, *Clerk.*

Citation of appeal.

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

To NATHAN HART, esq.:

Whereas Joseph Fowler, jr., has this day filed in the office of the clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, a petition of appeal from a certain final judgment rendered in said court against him in the case Joseph Fowler, jr., vs. Nathan Hart, No. 1620 of the docket of said court; which appeal is returnable to the next term of the Supreme Court of the United States, to be holden on the first Monday in December, A. D. 1850, at

the city of Washington. You are therefore hereby cited to appear in person or by attorney in said court, on the day last aforesaid, to answer to the said appeal.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this [L. S.] 29th July, 1850.

J. W. GURLEY, *Clerk.*

Marshal's return on the above citation.

Received July 29, 1850, and on the same day served a copy of the within citation of appeal on Nathan Hart, in the manner following, to wit, by handing the same to J. N. Marks, his agent, in person, at New Orleans, and who at the time accepted service of the same, said N. Hart being absent, and returned 30th July, 1850.

W. W. BUTLER,
Dy. U. S. Marshal.

UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and eastern district of Louisiana, clerk's office.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 77 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Joseph Fowler, jr., vs. Nathan Hart, No. 1620 of the docket, so far as the same now remains of record or on file in said court.

Witness my hand and the seal of said court, at the city of [L. S.] New Orleans, this 16th day of October, A. D. 1850.

J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 16th day of October, A. D. 1850.

THEO. H. McCALEB. [L. S.]

UNITED STATES DISTRICT COURT,
Eastern district of Louisiana.

In the bankruptcy of Daniel T. Walden, No. 274.

I, N. R. Jennings, clerk of said court, having custody of the records

in bankruptcy thereof, do certify, that, after the filing of the report of the assignee on the 24th February, 1848, the following order was granted and published in the "Picayune" and "Bulletin," two newspapers published in New Orleans, for the number of times required by the rules of court in such cases provided, to wit:

United States district court, for the district of Louisiana. February 28th, A. D. 1848.

Present, hon. Theo. H. McCaleb.

On motion and in conformity to law, notice is hereby given, that on Monday, the 13th day of March next, the estate of D. T. Walden, No. 274, in bankruptcy, will be referred to the board of commissioners to make a report thereon previous to the order of distribution. All creditors who have not proved their debts according to law, to be placed on the tableaux of distribution, are notified to do so before the papers and proceedings shall be referred as above mentioned.

By order of the court,

(Signed) N. R. JENNINGS, *Cl'k*,

F 29—3tin10 By A. BOISBLANC, *Deputy clerk*.

And I do further certify, that previously, to wit, on the 23d day of May, 1845, there was granted and duly recorded on the minutes of the court, an order in the exact words following, viz:

Friday, May 23d, A. D. 1845. The court met pursuant to adjournment. Present, the hon. Theo. H. McCaleb.

In the bankruptcy of Daniel T. Walden, Wm. Christy, assignee. Petition to sell, and notices to mortgage creditors. No. 274.

Publication of notice having been duly made, and no opposition filed, an order of sale was this day granted in the manner and form prayed for by the assignee, and it appearing to the court that the judgment creditors of the bankrupt, as set forth in the schedule annexed to said assignee's petition, having been duly notified as appears by the return of the marshal, and no oppositions being made to the terms of the sale, it is therefore ordered that the assignee be authorized to sell the property set forth. Publication to be made in the Bulletin and other paper at the discretion of the assignee.

All which now appears of record.

In testimony whereof, I hereunto set my hand and seal of the court, [SEAL.] this 3d day of January, 1851.

N. R. JENNINGS, *Clerk*,

By ROB. M. LUSHER, *D. clerk*.

STATE OF LOUISIANA,
City of New Orleans.

It is agreed that the foregoing copies on two pages, this day certified